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ABSTRACT

This paper reports on a study that examines legal and policy issues surrounding access to public-school extracurricular activities for home-school students. Chapter 1, "The Problem and Its Background," reviews such relevant issues as the history of choice in America and Illinois, legal foundations, regulatory disparities, research questions, methodology, significance, and study limitations. Chapter 2, "Review of the Literature," examines studies from such areas as history, demography, sociology, law, policy, national studies, regional studies, policies, and studies from Illinois. Chapter 3, "Social Historiography and Legal Case Methodology," explores the legal standing of home schooling, variability in statutory considerations, the present status of legislation, case law in such areas as extracurricular and interscholastic activities, and the current position of the National Federation of High Schools Association. This chapter also examines existing state athletic association regulations in four predominant approaches: "legally enrolled," "bona fide," "implied prohibition," and "direct denial." Chapter 4, "Analysis of Political and Ethical Considerations of the Access Issue," explores arguments for, and against, making access to public-school extracurricular activities available to home-school students, the Michigan experience, and a proactive opportunity available to Illinois. Chapter 5, "Summary, Findings, Concerns, and Policy Recommendations," concludes that the weight of research supports denial of access. (Includes four appendices reviewing state regulations, statutes, and policies. Contains over 125 references.) (TEJ)

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HOME SCHOOLING AND THE REQUEST FOR ACCESS TO PUBLIC SCHOOL EXTRACURRICULAR ACTIVITIES: A LEGAL AND POLICY STUDY OF ILLINOIS

David R. Lett

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Home education played a major role in the way children were educated in our nation's earliest history. Following the Common School Movement of the mid-nineteenth century, little thought was given to home schooling children until the alternative schooling movement of recent times. Most experts agree that the momentum for the modern home schooling movement has occurred during the last two decades. With the recent popularity and growth of alternative forms of education, including home schooling, there is an accompanying interest in many related legal issues. One of these issues, the issue of access and whether home schoolers have the right to participate in public school extracurricular activities, served as the focus of this study.

The literature review revealed a number of recent studies and writings on home schooling in general, but a very limited amount of legal research dealing with the specific issue of access. One of the primary purposes of this study was to create a 50 state legal and regulatory comparison on the issue of home schooler's request for extracurricular access. This comparison would serve as a framework for the state of Illinois and more specifically the Illinois High School Association (IHSA) to have the information necessary to make future well-informed policy decisions on the issue of access.

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This study revealed 22 states known to allow home schoolers access to public school interscholastic activities. Ten states have created access by means of state statute, while the remaining 12 states provide access through the rules and regulations of their respective high school athletic associations. Of the 28 states who deny home schooler access, four sub-categories of states were created. The largest of these sub-categories included 15 states with specific by-law wording calling on all students to be "legally enrolled" in the school for which they wish to participate. A second sub-category included eight states with by-law wording requiring all students to be a "bona-fide student" of their respective member school. The third sub-category of states included four states with by-law wording that implies prohibition of access for home schoolers. The final sub-category contained only one state which had created a by-law calling for the direct denial of home schooler access.

Given the relative newness of the issue of access, it was not surprising to find a limited number of litigated cases involving access. Three cases, Thomas, Snyder, and Kaptein dealt with a private school student's request for access to various extracurricular activities. Four cases, Swanson, Bradstreet, McNatt, and Gallery, as well as Kentucky Attorney General's Legal Opinion all focused on a home schooler's request for access to varied interscholastic activities. In virtually every case, the courts rejected the plaintiff's constitutional claim to due process of law, equal protection under law, or free exercise or religion. Additionally, with the exception of Snyder where special circumstances were found, the courts found in favor of the defendants involved, whether they were the local school district or the state athletic association.

These regulatory and legal findings coupled with anti-access rationale and communitarian philosophy served as the basis for two primary policy recommendations. The first called on the National Federation of State High School Associations (NFHS) to adopt a policy which denies home schoolers access to extracurricular interscholastic activities. This type of policy position would create greater uniformity of case law and

legal precedent, clearer direction on the issue of access for the 50 state athletic associations, and increased efficiency for dealing with future access litigation. The second recommendation is based on the likelihood the first might meet with resistance and calls on the Illinois High School Association (IHSA) to reverse its present policy position of allowing access and adopt a by-law modeled after one of the states which denies access. Thus creating uniformity across the state with regard to the issue of access, where presently no direction exists for local school districts.

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HOME SCHOOLING AND THE REQUEST FOR ACCESS TO PUBLIC SCHOOL EXTRACURRICULAR ACTIVITIES: A LEGAL AND POLICY STUDY OF ILLINOIS

DAVID R. LETT

A Dissertation Submitted in Partial
Fulfillment of the Requirements
for the Degree of

DOCTOR OF EDUCATION

Department of Educational Administration and Foundations

ILLINOIS STATE UNIVERSITY

1999

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CHAPTER I

THE PROBLEM AND ITS BACKGROUND

Historical Perspective

Home schooling advocates are quick to point out that home education has a long heritage. In fact, early accounts of colonial life do suggest that the home was the primary center of learning (Knowles, Muchmore, & Spaulding, 1994). This was largely out of necessity given the constant expansion to new and underpopulated areas during colonial times. Universal public education simply did not exist and as a result the situation dictated that parents educate their children at home if they wanted them to receive an education (Cremin, 1970). Their actions were neither grounded in the religious or constitutional justifications provided by many of today's advocates of home schooling nor were they seeking alternatives to public education. Given the slow development of public schools, Gordon, Russo, and Miles (1994) claim that "the majority of Americans up to and through the first half of the Nineteenth Century were educated at home" (p. 5).

Despite religious justification having virtually no role in the establishment of the home as the center of educational training, religion did have a significant place in the process itself. According to colonial historian Lawrence Cremin (1970), preaching and catechizing were the types of education most commonly practiced in each of the colonies planted during the first half of the seventeenth century. Also, colonists were heir to Renaissance traditions stressing the centrality of the household as the primary agency of human association and education. Clarence Carson (1987) wrote:

> Education was mainly a family responsibility in colonial America, and the extent of it was largely left up to the individual. There were no compulsory attendance laws enforced by governments. Most children

> got at least their early education in the home, where they might be taught to read, write, and figure, but most certainly would be trained in house-keeping . . . and in many tasks of making a living (Quoted in Klicka, 1988, pp. 124-125).

Along with common law and biblical traditions' emphasis upon the home being the center of educational authority came the Puritan religious focus. Early Puritan children were instructed by tracts and sermons proclaiming the correctness and significance of their culture's traditional emphasis upon the centrality of the home. In most early Puritan homes the cornerstone of home education came from the reading and application of Biblical scriptures. Consequently, the most important reason the colonists wanted their children to be literate was so they could read the Bible and thereby learn its principles for living, with either the parents or a tutor (usually a pastor) providing the instruction (Klicka, 1988).

Despite the earliest forms of education being found almost exclusively in the home, the role of the state in influencing the process itself could likewise be seen very early on. Cremin (1970) cites, as significant evidence of this fact, one of the earliest pieces of legislation (1642) in Massachusetts. This law empowered the selectmen of each town:

> "to take account from time to time of all parents and masters, and their children, especially their ability to read and understand the principles of religion and the capital laws of this country," and authorizing them, with the consent of any court or magistrate, to "put forth apprentices the children of such as they shall [find] not to be able and fit to employ and bring them up" (pp. 124-125).

The responsibility for encouraging and overseeing familial education, which had primarily rested with the clergy previously, now was being ceded to governmentally appointed selectmen.

A similar benchmark piece of legislation passed in 1647 by the Massachusetts Bay Colony was called the "Old Deluder Satan" statute. In essence, this was the first

general law providing for schools (Monroe, 1909). This law required the establishment of schools to teach writing, reading, and Bible study as a way of preventing Satan from succeeding in the battle for the souls of women, men, and children. By 1671, all of the New England colonies except Rhode Island had followed Massachusetts in adopting some form of compulsory education. By all appearances these early statutes appear to be motivated solely by religious concerns and not by clearly defined educational goals, however, they helped set the stage for the eventual development of the public school system (Gordon, Russo, & Miles, 1994).

Public education as we know it today had its beginnings with what has come to be called the Common School Movement. Jorgenson (1987) defines this period as "a series of state movements occurring roughly during the period 1830-1860 that looked toward expansion and improvement of education at the elementary level" (p. 20). According to Blumenfeld (1984), the idea for a state-owned and -controlled education system did not originate in the United States. This concept was patterned after Prussia, where an authoritarian monarchy used centralized, government-owned and -controlled schools and compulsory attendance to further its own political and social agenda. Americans generally supported this type government involvement in education primarily due to the degree of educational diversity that grew out of the provincial period and the desire of many to have greater educational uniformity.

The Common School Movement of the mid-nineteenth century was also directly responsible for several trends impacting public schooling and educational authority for the remainder of the century and beyond. The first of these involves the issue of compulsory attendance laws. While religiously motivated, compulsory attendance laws could be found within many of the New England colonies by the end of the seventeenth century, the first "modern" compulsory attendance law was not passed until 1852, again in Massachusetts. With this new beginning the mid-nineteenth century compulsory

attendance laws based on educational aims became widely supported in many other states. In fact, compulsory attendance statutes are present in all 50 states today. These laws have their roots in a variety of state concerns: to teach children to read, write and compute; to prepare children to assume productive positions in American society; to help enculturate the masses of European immigrants; to eliminate truancy; and, to remove abuses in child labor accompanying the rapid urbanization and industrialization of American society. Accordingly, it was as much for social reform, not religious, that precipitated a shift in the law, moving the education of children from home to the public schools. Typically, compulsory attendance laws require public or approved non-public school attendance for children ranging from ages five to sixteen in the area of education and public schooling (Gordon, Russo, & Miles, 1994).

A second major trend that can be seen as coming out of the modern Common School Movement of the nineteenth century was the increasing desire of government to differentiate between "public" and "non-public" schools with the former considered the only legitimate recipient of public financial support. Struggles in several state legislatures indicate that the public school campaign was a Protestant movement and that its leaders regarded the Catholic Church as the foremost enemy of the movement. Not only was the public school in most instances regarded as a Protestant institution; it was also considered the first line of defense against the growth of Catholicism. The Protestant bigotry toward Catholicism that was a symptomatic element of the Common School Movement contributed greatly to future precedents in the area of public education. The first of these was established by the end of the 1850's. The principle of denying public aid to non-public schools had been firmly established in almost every state and reinforced by the United States Supreme Court. The second precedent established was indelibly linked to the denial of public aid to non-public schools and that was the ultimate removal of Bible reading in public schools. Somewhat ironic for supporters of the Protestant

movement, the very argument used by Common School founders (primarily Protestant supporters) to block public aid for non-public schools (primarily Catholic) was being used to prevent the promotion of any one given religion through Bible reading in public schools (Jorgenson, 1987).

A final trend that can be viewed as an indirect outgrowth of the Common School Movement is the inevitable challenge to compulsory attendance laws that occurred almost immediately and would continue until the present time. Two of the twentieth century landmark decisions challenging compulsory attendance laws were Pierce v. Society of Sisters (1925) and Wisconsin v. Yoder (1972). In Pierce (1925) the Supreme Court clearly established that compulsory attendance laws had to accommodate both public and non-public schooling. The second case of Yoder (1972) saw the high court grant a religious exception, an Amish Exemption to Wisconsin's compulsory attendance law. By their very nature, compulsory attendance laws created a tension upon parental rights to determine and direct the education of their children (Gordon, Russo, & Miles, 1994). These two cases are representative of a twentieth century concern on the part of some Americans over increased governmental control of the public educational domain. The recent revival of home education, beginning substantially in the 1980's, for many home schoolers seems to be bringing the issue of educational authority full circle in considering a return to the philosophy which prevailed in an earlier America (Klicka, 1988).

Today's Parental Rationale

A general assertion held by a number of experts who have studied the home schooling movement, including Knowles, Muchmore, and Spaulding (1994), is that it is very difficult to characterize contemporary parents and families who currently operate home schools. Whereas a commonly held perception is that those parents who have turned to home schooling are simply right wing religious fanatics hoping to isolate their

children from an "evil world," the reality is these families run the full range of the societal spectrum from religious conservatism, to moderate views, to liberal humanism. They are inclusive of the poor and the rich, the scholarly and the nonintellectual, the non-schooled and the schooled.

Despite these wide differences, broadly speaking, there are two basic groups of parents who engage in home education today. The first, and smaller, of these groups has been identified by Van Galen (1991) as the "Pedagogues." Pedagogues typically take part in loosely defined exploratory curricula where the children are placed in unstructured environments, focusing on such pursuits as their own self-awareness. These families tend to place the learner central to everything else happening in the home with the understanding that "schooling" is not necessarily synonymous with "education." With systematic curricula, teacher-directed lessons, and external rewards and punishments, "schooling" promotes an atmosphere of students' reliance on extrinsic motivation. Conversely, "education" implies the holistic development of the learner and includes the idea that the learner is responsible for determining what is learned. This perspective places a great deal more emphasis upon intrinsic motivation, with learning being much less structured, more direct, and more experiential (Knowles, Muchmore, & Spaulding, 1994). This unstructured approach had developed into two basic subgroups. The first, which has been described as the "Woodstock Generation," originated in the late 1960s and based its philosophies of learning on concepts that included individual awareness and self-actualization. Given this group's relative extremism and its lack of touch with mainstream American values, it rapidly dissipated and presently represents a very small percentage of the home schooling community. A second cluster of home schooling pedagogues have expressed their dissatisfaction with the quality or climate of the education provided in traditional public schools. Likewise, this group also comprises a

very small portion of today's home schooling community (Gordon, Russo, & Miles, 1994).

The second major classification of home schooling advocates Van Galen (1991) describes as "Ideologues." These parents tend to view home schooling as an opportunity to create formal learning environments with externally imposed structures, including progression through pre-determined curricula, extensive use of textbooks, and rigid schedules. To these parents, "home schooling" means simply a way to transfer many of the educational activities of the public school to the environment of the home and still remove those elements of institutionalized education that many parents find objectionable (Knowles, Muchmore, & Spaulding, 1994). Parents in this category are also generally motivated by religious convictions; they engage in instruction devoid of secular humanism and primarily focused on religious teachings, moral values, and patriotism mixed in with some basic skills. Although not exclusively so, these parents tend to fit the more stereotypical profile of being fundamentalists or Religious Right Christians who maintain a strong desire to interject their religious dogma into the total instructional program. This type of parent has developed a nationwide network and has been instrumental in bringing many of the changes in state laws and regulations governing compulsory education (Gordon, Russo, & Miles, 1994).

Parental rationales for educating their children at home may vary, but the core of their reasons are based in the libertarian emphasis on individualism and will generally fit into one of three categories. The first group are those parents who are expressing an intense dissatisfaction with public school outcomes, philosophies, parent/teacher personality conflicts, or other perceived events and attitudes. For this group, schools are seen as repressive of their child's individuality or the place where they endured devastating experiences themselves. Home is considered a less stressful environment and more conducive to nurturing their scholastic development. It is generally viewed as

particularly adept for dealing with cases of the gifted or handicapped. A second argument centers on the commonly held belief among home schoolers that public schools often "cater to mediocrity" and do very little for those students wishing to exceed the expected norm. Often these parents are attempting to compensate their children for experiences that were lacking in their own childhood or education. Others believe the home provides the greatest opportunity for experiential learning and will be more complementary of the learning styles of their children's individual needs. To these families, the home offers more freedom to learn in ways that are not always recognized in large classrooms. The third group of parents primarily object to a conflicting set of values between families and schools and the bent of their argument usually takes a highly religious tone. Most often for these parents, religious beliefs and attitudes give credence to the ideas of creating supportive emotional and academic environments of "morally superior" settings. Parents in this group have also been motivated by the desire to "create the perfect family" and cultivate close family relationships. Because home education has the potential to offer these kind of benefits, the religious perspective is believed by many to further verify the worth of operating a home school (Knowles, Muchmore, & Spaulding, 1994).

Legal Foundation for Home Schooling

A close examination of the legal right of today's parent to home school their child would appear to be indelibly linked to the larger related questions: where do parental rights to their child's education end, and where does the authority of the state to regulate education for the good of the societal whole begin? The precedent for state authority to regulate education would appear to be grounded partially in the implementation of compulsory attendance laws across this country, beginning in the middle of the nineteenth century. Compulsory education in the United States is mandated by an elaborate system of state laws requiring attendance at either public schools or at some other acceptable learning arrangement. It has its roots in English legislation of the

sixteenth and seventeenth centuries. The English "Poor Laws" of 1563 and 1601 provided the theoretical foundation for all educational legislation in colonial America. Americans in colonial and early national periods expanded upon these laws, changing them to meet the peculiar needs of a rapidly-developing nation with a philosophy of equal opportunity and individual achievement. These laws were refined into our present universal compulsory free educational system in an evolutionary manner, with occasional reversals in direction, over a period of two and a half centuries (Kotin & Aikman, 1980).

Modern compulsory attendance laws in the United States had their roots in Massachusetts in 1852. The scope of compulsory attendance laws had changed from a preoccupation with religious concerns to a demand for laws based upon educational aims. Accordingly, it was social, not religious reform that precipitated a shift in the law which moved the education of children from home to the public schools. Due to the magnitude of social issues, and vast array of religious sectarian interests, laws governing education were primarily geared toward attendance of state-operated schools rather than any type of non-public school (Gordon, Russo, & Miles, 1994).

Today compulsory attendance laws are present in one form or another in all fifty states. These laws typically require public or approved non-public school attendance for children ages five to sixteen. Parental failure to comply with these laws can result in criminal penalties, usually in the form of misdemeanor convictions; sanctions as severe as the removal of children from the home or imprisonment are exceedingly rare. As compulsory attendance laws become more and more popular, there were early challenges to their authority based primarily on state constitutional grounds. The very nature of these laws creates a tension between the right of a parent to determine the direction of their child's education and the right of the state to protect the common good of society as a whole. Many of the initial controversies surrounding compulsory attendance were associated with whether non-public schools could substitute for public schools. As a

result of their initial challenges, most states created and passed legislation that contained provisions for private schools and in a few rare instances provided for schooling at home. Generally, during the nineteenth and early twentieth centuries, compulsory attendance laws have survived most constitutional challenges upholding them as a legitimate state police power (Gordon, Russo, & Miles, 1994).

Although there are a scattering of state cases that have tested compulsory attendance laws, the most serious challenges have been presented to the United States Supreme Court. In 1925, the issue of state control of non-public schools came to a head and the Supreme Court handed down a landmark decision in the case of Pierce v. The Society of Sisters. The voters of the state of Oregon enacted by initiative a 1922 law requiring all school-aged children to attend only public schools. The law was challenged in federal court by a Catholic parochial school and a military academy. Eventually an injunction was granted to the private schools preventing enforcement of the law, and the state of Oregon appealed to the U.S. Supreme Court (Private School Law, 1991). Relying on the property and liberty interests of the parents and proprietors of non-public schools, the Court focused on the Fourteenth Amendment to the United States Constitution. It found that the statute infringed upon the rights of parents to choose schools where their children received both an appropriate education and religious training. Thus, the Court ruled:

> . . . we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control . . . The fundamental theory of liberty upon which all government in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public school teachers only. The child is not a mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations. (Gordon, Russo, & Miles, 1994, p. 10)

As a result of this ruling, the Court confirmed the right of individuals to establish and maintain both private non-sectarian and private religious schools, and the right of parents to send their children to such schools. Additionally, the court held the right of the state to require attendance at a school did not include the right to preclude attendance at non-public schools. With this clear determination an era of relative calm ensued (Kotin & Aikman, 1980).

The Supreme Court revisited the issue of state control over education nearly forty-five years after its historic ruling in Pierce. In Wisconsin v. Yoder (1972), the high court recognized the rights of devout Amish parents not to send their children to school after the 8th grade. In this case the parents were able to demonstrate that secondary schools, which emphasized "intellectual and scientific accomplishments, self-distinction, competitiveness, [and] worldly success," were in direct conflict with Amish beliefs in "cooperation, piety, and a simple, agrarian life style" (Schimmel & Fischer, 1987, p. 149). They further asserted that such a practice would endanger their salvation and threatened its 300-year-old religious traditions. The high court concurred and warned that "it cannot be over-emphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some 'progressive' or more enlightened process for rearing children for modern life" (Lines, 1983, p. 8). The Court also set about reaffirming the State's responsibility for the education of its citizens, but used the Free Exercise Clause of the First Amendment rather than the Due Process Clause of the Fourteenth Amendment. It reasoned:

> There is no doubt as to the power of a State, having a high responsibility for the education of its citizens, to impose reasonable regulations for the control and duration of basic education . . . Yet even this paramount responsibility was, in Pierce, made to yield to the right of parents to provide an equivalent education in a privately operated system . . . Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those specifically protected by the Free Exercise

> Clause of the First Amendment and the traditional interests of parents with the religious upbringing of their children. (Gordon, Russo, & Miles, 1994, p. 11)

In accordance with Yoder and similar future cases, to find a violation of the free exercise clause, the courts must find a burden placed on a sincere religious belief. If there is no burden, or it is "de minimus," if the belief is philosophical, political, or social, or if it is not sincerely held, no further analysis is necessary. If the required elements are present, then the courts must examine whether the state has sufficiently compelling justification for its rules, and whether it has chosen the "least restrictive means" of achieving its goals. In general terms, the courts balance the interest of the individual in the free exercise of religion against the interest of the state in an educated citizenry (Lines, 1983, p. 8).

Viewed together, the precedent setting cases that have helped establish the parameters of state regulation of compulsory attendance issues do not directly address the right of parents to engage in home schooling. However, in upholding the state's right to mandate and regulate instruction, they provide a lens through which home schooling cases may be examined. The creation of the so called "Amish Exemption" notwithstanding, Yoder's narrow scope has not been the boon home schooling advocates thought it would be. In fact, following Yoder a number of courts have further restricted its interpretation. As an example, the Iowa Supreme Court in Johnson v. Board of Education (1983), refused an Amish Exception to Baptist parents who wished to educate their children in their own schools staffed by non-certified teachers. When the plaintiffs failed in their initial efforts, they were joined by additional parents and Baptist ministers in a federal action where they argued that since they were fundamentalists similar to the Amish, that refusing to grant them the same exemption would be denial of equal protection. The Eighth Circuit rejected their argument holding that, unlike the Amish,

these Baptist children lived in ordinary residential neighborhoods interacting with others not of their faith (Gordon, Russo, & Miles, 1994).

In attempting to deal with the relatively recent revival of parents home schooling their children and whether they are exercising their fundamental constitutional right, the courts have generally not supported this notion. As an example, in re Sawyer (1983) involved Kansas parents who taught their children at home in violation of state compulsory education law. They argued that they had a "fundamental right" to educate their children in any manner they "deem most appropriate" (Schimmel & Fischer, 1987, p. 152). This despite the fact that the mother, who was the sole teacher, also took care of two additional children during "class" time, lacked a college degree or a teaching certificate, and had no teaching experience. Additionally, there was no evidence of testing, planning or scheduling. The state supreme court ruled against the family and held that:

> The United States State Supreme Court has held education is not a fundamental right, but rather it is to be regarded and reviewed as any social and economic legislation . . . The standard of review to be applied then, is whether the state's system has some rational relationship to a legitimate state purpose.

Since the Kansas compulsory attendance law had "rational relationship to the legitimate state purpose of education of its children," the court ruled that the law was valid and the parents' argument was not (Gordon, Russo, & Miles, 1994, p. 15).

Although home schools were recognized statutorily in only two states prior to 1982, it is clear that they have not been beyond the scope of judicial review. In fact two distinct types of cases have evolved: equivalency and free exercise of religion. Decisions based on equivalency have provided more favorable results for home schoolers, than cases litigated on the basis of First Amendment claims due to the narrow way in which the courts have construed Yoder. In finding favorably on the issue of equivalence, the courts have in a majority of instances pursued what Gordon, Russo, and Miles (1994)

have termed a "legal fiction of equivalent instruction" (p. 17) that has primarily been confined to subject matter. As a result, ancillary concerns such as equipment, supplies, materials, facilities, current educational trends, and modern instructional theories have been all but ignored. On the other hand where courts have used socialization as the measure of equivalency, parental rights to home schooling have been more typically denied.

Home Schooling in Illinois

In Illinois, the defining case for home schoolers can be found in People v. Levinson (1950). This case has come to be viewed as defining a more liberal position on the spectrum of academic equivalence. In this case, the parents of a seven year old girl were convicted of violating the state's compulsory attendance law. This law states as follows:

> Whoever has custody or control of a child between the ages of 7 and 16 years shall cause such child to attend some public school . . . ; Provided, that the following children shall not be required to attend the public schools: 1. Any child attending a private or parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education in the English language. (Barbre & Turner, 1996, p. 1)

In the Levinson appeal to the Illinois Supreme Court, the evidence indicated that the mother had been teaching her daughter at home for five hours a day and that the child had demonstrated "proficiency comparable with average third-grade students." Additionally, it was argued that during the child's first 8 to 10 years "the mother is the best teacher" and that education in competition with other students "produces a pugnacious character" (Schimmel & Fischer, 1977, pp. 83-84). The court did not believe that the home school parents had violated the compulsory attendance law. The court clarified the purpose of compulsory education laws in the following way:

> Compulsory education laws are enacted to enforce the natural obligation of parents to provide an education for their young, an obligation which

> corresponds to the parents' right of control over the child and the object of Section 26-1 of the School Code, requiring children to attend school, is that all children shall be educated, not that they shall be educated in any particular manner or place.

Further, the court defined a private school as: "a place where instruction is imparted to the young . . . the number of persons being taught does not determine whether a place is a school" (Barbre & Turner, 1996, p. 2).

As a result of the court's ruling in Levinson, there are a number of important outcomes that have had a profound affect upon home schoolers in the state of Illinois. The first and most important is that the findings indicate that the parent's right to control their children includes the right to provide an education for them at home. In Levinson, the child's school was in the home and there was only one student. Despite this fact, the court ruled that this had no bearing on the legality of the home school situation. A second important outcome coming out of the court's ruling in Levinson has been that a home school can legally be considered a private school:

> . . . the law is not made to punish those who provide their children with instruction equal or superior to that obtainable in the public schools. It is made for the parent who fails or refuses to properly educate his child (Barbre & Turner, 1996, p. 2).[1]

A third and equally important outcome of the Levinson ruling in Illinois has been that since the Supreme Court's ruling in 1950, no state agency has questioned the right of

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[1] Illinois is one of at least thirteen states -- AK, AL, CA, ID,IL, IN, KS, KY, MI, NE, LA, PA and TX -- in which individual home schools may operate as private or church schools. Only AK, MI and LA have specific home school statutes with an option to operate as a private school. According to Section 26-1 of the Illinois School Code, if a child is "attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in public school," and where instruction is in the English language, the child is in compliance with Illinois compulsory attendance law. Home schools that meet these two requirements are considered legal private schools (Gordon, Russo, & Miles, 1994; Klicka, 1997).

parents to establish a home school, thus confirming the precedent setting nature of the high court's ruling in Levinson.

Regulatory Disparity in the United States

Educational policy makers across the United States, and in Illinois in particular, have recently been confronted with a rebirth of interest in the educational phenomenon known as home schooling. This movement has seen significant growth in recent years, nationwide and in Illinois. Conservative estimates of the number of students being home schooled today range from 300,000 to 500,000 children (Ray, 1992), while some estimates have the number approaching 1.23 million children (Shields, 1997). Despite the total number of students being viewed by many as statistically nonsignificant, Kested (1997) points out that the growth in the number of parents choosing to home school, particularly in Illinois, warrants the attention of all educational policy makers.

In general, home schooling has been regulated under a state's compulsory attendance laws. Presently every state in the union requires the attendance of school age children in some permissible educational program. Compulsory attendance laws, however, do not compel all children to attend only public school. The Supreme Court, in Pierce v. Society of Sisters, held in 1925, that children could attend public, private, or parochial schools (Henderson, Golanda & Lee, 1991).

Typically, compulsory attendance statutes place the obligation for a child's attendance upon his or her parent or guardian. The laws used to regulate home schools vary widely from state to state (De Roche, 1993; Kested, 1997; Klicka, 1997). Kested (1997) and Klicka (1997) have studied state regulatory policy governing home schools extensively and see the fifty states falling into one of three types: low regulation, moderate regulation, and high regulation (See Appendix A). Low regulated states have no requirements for parents to initiate any contact with the state. Moderately regulated states require parents to send notification, test scores, and/or professional evaluation of

student progress. Highly regulated states require parents to send notification or achievement test scores and/or professional evaluation, plus other requirements (e.g. curriculum approval by the state, teacher qualifications of parents, or home visits by state officials). Peterson (1985) characterizes statutes governing home schooling similarly in claiming that they basically fit into one of three categories: those that specifically allow for home instruction, those that allow for instruction equivalent to that available in the public schools, and those that make no provision for home education. Because school attendance is not synonymous with education, more and more states have altered compulsory attendance statutes to acknowledge the legitimacy of home schools.

Home School Regulation in Illinois

Presently, the state of Illinois falls on the regulatory spectrum as one of those states that simply invoke compulsory attendance, have no specific statute provision for home education and would appropriately be categorized as a low regulation state. (De Roche, 1993; Kested, 1997; Klicka, 1997). However, Illinois courts have ruled that home schools are a permissible alternative to public schooling. In People v. Levinson, (1950), the Supreme Court ruled that the term "private school" includes home schools if the teacher is competent, the required subjects are taught, and the child receives an education that is at least equivalent to public schooling (Policy Reference Education Subscription Service, Illinois Association of School Boards, 1997). In a more recent decision, Scoma v. Chicago Board of Education, 1974, the court emphasized that the burden of proof rests with the parents to establish that the plan of home instruction which they are providing to their children meet the state requirements. Despite these case law guidelines, the Illinois General Assembly and the State Board of Education have remained remarkably quiet on this issue and have failed to give local district school officials any real sense of direction by not establishing any specific regulation regarding

home instruction. As a result, this particular educational option in Illinois has left school officials with many unanswered questions (De Roche, 1993; Kested, 1997).

One of the areas related to home schooling that concerns local education officials in Illinois is the issue of whether districts should or should not accommodate home schooler's request for access to the extracurricular areas of their local public school (Policy Reference Education Subscription Service, Illinois Association of School Boards, 1997). There is a long-standing legal precedent for the notion that extracurricular activities are a "privilege" rather than a "right" and as a result no student public or homeschooled can demand that it is their legal "right" to participate in extracurricular activities. Given the limited amount of research conducted on home schooling in general and more specifically its regulation by individual states, it should not come as a surprise that there have been virtually no analyses done on the issue of state statutes or laws governing home educated students' requests to participate in certain interscholastic public school activities. Presently one of the only known analyses of this area of home schooling concern was conducted by McGarvey (1997) seeking to summarize existing statutory law or case law in those states which have dealt with the issue of equal access for non-public students. As a result of this research, states can be placed into one of two categories: those who have specific statutory law or case law allowing for equal access to all public school activities, and those who do not. In states without laws addressing this situation, a decision on this issue is usually left up to the local school district to decide whether or not they will allow home educated students access to public school services. Additionally, most states have private associations which set by-laws for school participation in interscholastic activities (competitive sports). Generally, many of these by-laws do not allow a student's participation in these activities unless the student is enrolled full-time in the school he or she represents. If a school violates this rule, the association can remove the school from the league or make the team forfeit its games.

As a result of the lack of direction from the state of Illinois, there is virtually no continuity with regard to this issue. One particular example is the disparity found in the policy positions taken by the Illinois Elementary School Association (IESA) and Illinois High School Association (IHSA). The IESA is responsible for regulating all interscholastic activities for its member elementary schools, while the IHSA is charged with an identical responsibility in serving its member high schools.[2] Presently the IESA prohibits home schooled children from participating in IESA-sponsored activities. This position is in keeping with current interpretation of By-Law 2.031 which states, "Students must attend member schools and may only represent in competition the school they actually attend" (IESA Handbook, 1998, p. 12).[3]

Standing in stark contrast to the IESA's rigid position is the more accommodating position taken by the Illinois High School Association (IHSA). The IHSA addresses the issue of access for home schoolers with By-Law 3.025 which states:

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2 The IESA sponsors and regulates 14 interscholastic sports and activities: boys baseball, boys wrestling, girls softball, girls volleyball; boys and girls basketball, cross country, track & field; art, music, scholastic bowl, speech (IESA Web Page, 1998). The IHSA sponsors and regulates 31 interscholastic sports and activities: boys baseball, boys football, boys wrestling, girls badminton, girls bowling, girls softball; boys and girls basketball, cross country, golf, gymnastics, soccer, swimming & diving, tennis, track & field, volleyball; chess, debate, drama & group, interpretation, individual events, music, scholastic bowl (IHSA Web Page, 1998).

3 The IESA recently took action at their June 12, 1998 Annual Board Meeting to allow home schoolers to be eligible for IESA activities. Effective the 1998-99 school year, home schoolers may now be eligible provided they meet the criteria set forth in newly adopted By-Laws 2.038 and 2.039. This criteria requires the member school to (a) accept and grant credit for the work taken, (b) establish a transcript record for the student and would ultimately issue a graduation diploma for the student upon completion of graduation requirements through the home school or alternative school curriculum it accepts, (c) establish a means to check scholastic eligibility on a weekly basis in order to certify that the student is passing all subjects each week, and that the student's parents are residents of the school district, such students may be granted eligibility for participation in IESA activities. This will require a local board of education to judge whether it can accept work offered through instruction outside its normal curriculum (The IESA Report, 1998, August, p. 4).

> IHSA will grant interscholastic athletic and activity eligibility to home school students under the following conditions: (a) the home school work must be accepted by their local school district board of education and granted credit toward education by the local high school; and (b) the local high school establishes a method of monitoring the home school student's weekly academic performance in order to certify that the student is passing a minimum of 20 credit hours of high school work per week and is meeting the minimum academic eligibility standards for participation (Policy Reference Education Subscription Service, Illinois Association of School Boards, 1997, pp. 2-3).

Statement of the Problem

The objective of this study is to establish where the state of Illinois fits into the home schooling regulatory picture in the United States and more specifically state regulation of home schooler's request for access to certain public school extra-curricular activities, e.g., sports, scholastic bowl, marching band, etc. This study will be grounded in a historical overview and legal analysis of the present educational phenomenon known as the home schooling movement and conclude with policy recommendations for the National Federation of State High School Associations (NFHS) and Illinois High School Association (IHSA).

Research Questions

1. What is the historical context and background of the present home schooling movement?
2. (a) What are major salient issues that provide the legal and constitutional framework for home schooling? (b) What is the present regulatory spectrum for home schooling and home schooler's access to public school extra-curricular activities in the United States? (c) Where does Illinois fit in terms of this issue?
3. (a) What are the major political and ethical considerations when trying to develop viable policy alternatives for any state? (b) Based on these considerations and policies that may already exist, what type of policy should the state of Illinois or more specifically the Illinois High School Association (IHSA) consider?

Methodology

There will be two primary methods of analysis used in this study: the social historiography methodology and the case method of legal research. The social historiography methodology will be used for the gathering of historical background information, as well as investigation into the political, social, and philosophical forces behind the arguments set forth by the parties to the controversy, i.e. home schooling advocates and home schooling opponents. The data collected will be subjected to recognized procedures of external and internal criticism. Attention will be focused toward examination of that data for possible biases and/or contradictions. Such weaknesses will be noted as well as statements by authors which take the form of unsubstantiated judgments, opinions, or conclusions.

The primary method of analysis used in this study was the case method of legal research. This methodology is neither a quantitative nor qualitative method of research, but is widely accepted and taught in all American Bar Association approved colleges of law and is the only methodology used for legal scholarship and litigation. The case method provides the best method not only for understanding the law as it stands today, but also for discussing possible alternate solutions and predicting future action of the courts. The starting point of this analysis is the relevant state and federal court decisions. In almost all legal analysis, the first consideration is given to the words of the court(s) being studied. In many cases, an abundance of information can be obtained from the exact words of the court, the cases cited by the court, the specific fact pattern used by the court, and/or the issues and arguments avoided by the court. When a statute or constitution is in question, the wording within the four corners of the document are also scrutinized (Novick, 1988; Burke, 1992).

A series of questions will be explicitly and implicitly asked about every court decision: (a) What were the facts? Were the facts unique enough to limit significantly

the holding of the court?; (b) What was the split of the court, which justices voted which way, and which justices voted with the majority? What was the dissent, if one was written?; (c) What was the issue statement of the case; what was specifically being argued?; (d) What was the holding of the case, what did the majority justices rule?; (e) Were there any important dicta or obitur dicta in the case?; (f) What was the reasoning given by the court for their decision? What alterations in the circumstances might have caused an opposite decision?; (g) What is the applicability of the court's decision? Once all of these questions have been entertained, a strong footing for further legal analysis will have been laid. For all practical purposes, all important information which lay in the contents of the judicial opinion will have been extracted (Novick, 1988; Burke, 1992).

Significance of the Study

Home schooling is clearly one of the fastest growing segments of American education (Frost, 1987; Ray, 1997; Shields, 1997). As a result, many states have struggled in providing appropriate regulatory monitoring of this group and specific issues that have emerged as an outgrowth of their cause, e.g., requests for access to certain public school activities. This study seeks to understand the historical and legal precedents for the home schooling movement itself. Additionally, Illinois' regulatory policies dealing with the issue of home schooling and more specifically the present Illinois High School Association's (IHSA) policy dealing with home schooler's request for access to certain public school activities will be placed in context with many of the other states in the United States.

Given the relative newness of the issue of home schooling, an in-depth legal analysis of current regulation of home schooling and placing Illinois in context with other states should prove useful information to Illinois policy makers as they struggle to stay on top of issues related to home schooling, e.g., educational neglect (De Roche, 1993), requests for access to public school activities (McGarvey, 1997), etc. This study will

combine the results of its legal and regulatory analysis with a thorough examination of political and ethical considerations related to the issues at hand in an effort to provide legal, ethical and practically based policy recommendations for both the National Federation of State High School Associations (NFHS) and Illinois High School Association (IHSA).

Limitations of the Study

This study is intended only to focus upon issues primarily related to regulation of home schooling and more specifically home schooler's request for access to public school activities governed by the Illinois High School Association (IHSA) and Illinois Elementary School Association (IESA). It does not attempt to gain the insights of parents, students, or even educators, all of whom may or may not have significantly different objectives, concerns, and opinions. Furthermore, the legal analysis conducted is intended to provide a framework from which political and ethical issues can be fully considered in formulating policy recommendations. It is important to recognize that with any legal analysis there is a certain amount of judgment involved in the analysis itself and the policy recommendations that are to follow.

The legal information gathered for this study will attempt to be encompassing of the most recent legal position of most states on the issue of regulating home schoolers and more specifically home schooler's request for access to participate in certain public school activities. As is the case with many legal issues, this will be an attempt to deal with statute law and case law that is constantly changing and as a result there may be information that becomes outdated or has changed prior to the completion of this study. The sole purpose of this study is to derive policy recommendations that will prove suitable for regulating home schoolers in the state of Illinois.

CHAPTER II

REVIEW OF THE LITERATURE

Overview

Home school writing and research has been conducted primarily in the last two decades. Previous writings were mainly anecdotal and written for the mass media with little empirical support provided by researchers. Home schooling became a research topic of interest in the early 1980s with the typical home school researcher having been a master's or doctoral student in education (Wright, 1988). The decade of the 1990s has brought an increased interest in alternative forms of education including home schooling and with this interest a greater body of literature has been produced by social scientists from a variety of disciplines. Their research has addressed various aspects of home education, including legal issues; historical and sociological concerns; learning processes; policy implications; student achievement; and home-educated students' social and emotional adjustment (Mayberry, Knowles, Ray, & Marlow, 1995). The findings of most of the research has been overwhelmingly positive with a significant amount of the work conducted by researchers linked with home school advocacy groups like the National Home Education Research Institute located in Salem, Oregon and the Home School Legal Defense Association located in Purcellville, Virginia. Any disadvantages or problems associated with home schooling has been given far less scrutiny (Wright, 1988). Since there were no studies found that specifically dealt with the issue of home schoolers' requests for access to certain extracurricular activities, this review focused on those deemed most relevant to this topic.

The largest body of existing home school literature and research falls into the category of historical, demographic and sociological studies. In limiting the search of relevant literature, priority was given to the literature that provided a contextual setting to the movement itself, had some type of connection to legal and policy issues related to home schooling, and was written in the decades of the 1980's and 1990's with particular emphasis placed upon the most recent ten years of writings. This review will conclude with a summary of home schooling research conducted in Illinois and demonstrate a compelling need for the legal and policy focus of this study.

Historical Studies

The Common School Movement of the mid-nineteenth century in the United States brought changing perceptions and emphasis for home-based education. In fact during the years between 1850 and 1970, relatively few children in the United States were educated at home by their parents (Knowles, Marlow, & Muchmore, 1992). There were a variety a reasons for the change toward compulsory public schooling, not the least of which was the Americanization of this nation's citizenry. Public schools sought to remove the stamp of individual and ethnic orientations that immigrant family-related learning environments promoted (Kaestle, 1983). It was also viewed as a way to counteract the undesirable characteristics of society's lower strata (Cremin, 1977). As a result, public schooling was initially not only an action against minority immigrant families, but it was also promoted as a remedy for many of the ills of the lower-class family structure (Knowles, Muchmore, & Spaulding, 1994).

Knowles et al. (1992) and Mayberry et al. (1995) described the development of the modern home schooling movement in terms of five phases: contention, confrontation, cooperation, consolidation, and compartmentalization. These phases have often overlapped, with the movement itself having its origin during the phase of contention in the early 1970s. The phase of contention was fueled by statements and

practices of a specific group of educational critics and reformers led by John Holt (1969) and Ivan Illich (1970). The work produced by these critics and other social scientists focused on the perceived deplorable conditions of public education. As a result of unprecedented publicity focused upon the failings of public schools many parents began to explore alternative forms of education including home schooling. During the early 1970s phase of contention, there emerged conflicts between home school parents and public school administrators, which were characterized by extensive litigation. The phase of confrontation saw widespread litigious action and can be attributed in part to the distress administrators felt when suddenly confronted with multiple cases of parents who thought they could educate children better than the public schools (Ritter, 1979).

The third phase, cooperation, had its foundation in the early to mid-1980s and has grown in its level of intensity ever since. During this period public schools began to implement policies -- often legislated or court mandated -- that allowed home school students to take advantage of public school facilities and programs. A fourth phase, presently evident in most parts of the country, is one of consolidation. This phase has been characterized by the numerical growth of home schoolers, networking, legislative lobbying, and public acceptance. The final phase of compartmentalization has emerged as result of confrontations between homeschool parents and public school administrators becoming less prevalent. Recent times have seen dissent among various competing factions, especially those with religious orientations, with the result being ideological fracturing and the beginnings of compartmentalization in the movement itself.

Demographic Studies

In providing an overview of much of the research on home schooling, Lines (1991) reinforces the notion that home schooling has reemerged as a popular option among parents in the last two decades. Lines (1995), one of the foremost experts on home schooling conducted extensive research for the U.S. Department of Education,

believes the number of students being home schooled today is roughly 500,000 children. This is approximately 1 percent of the total school-aged population and almost 10 percent of the privately schooled population. Her estimate is based on the assumption of modest growth since the fall of 1990, when she performed extensive data collection from three independent sources -- state education agencies that had data; distributors of popular curricular packages; and memberships of supportive associations (Lines, 1991). Ray (1997), in performing one of the "largest and most comprehensive studies on home schooling" (p. 1) for the Home School Legal Defense Association, surveyed more than 6000 home school families using a variety of sources and methods. He found the data indicating 1.23 million American children being taught at home with an estimated margin of error of $\pm$ 10%. Despite the disparity in estimate numbers provided by two of the leading home school researchers, it is clear that the movement has grown steadily over the past 25 years (Latham, 1998).

Many of the more recent studies on home schooling contain a section with demographic findings on its subjects. Lines (1991, 1997) provided an overview of many of these studies and indicated that the typical home schooling family is white, religious (Protestant), politically conservative, somewhat more affluent, having somewhat higher educational attainment, and more likely to have a two-parent family. There are most likely two children of school age who are being home schooled, and a third child, usually younger, in the family. The typical mother takes the largest share of the teaching responsibility, but the father usually participates in the process. The typical family makes use of community and other resources, like other home schoolers, church, the local school, the local library, and numerous organizations offering material or services for home schoolers.

Gustavsen (1981) performed descriptive research utilizing Michigan subjects in order to identify selected characteristics of home schools and the parents who operate

them. His demographic profile found home school operators generally living in small or rural areas. Their religious backgrounds were somewhat non-traditional, with families being smaller, and the wife usually responsible for the teaching. Incomes were found to be in the middle range with the typical parent having between one and three years of college. Likewise, Wynn (1985) performed a descriptive home schooling study in the state of Tennessee and found more families living in rural areas and small towns than in urban and suburban areas. The average number of children being taught at home was nearly two and these children were most often being taught by a parent with at least three years of college.

Linden (1983) performed a descriptive study on 66 home schooling families in the state of Texas and found most of his subjects were Protestants living in suburban areas. In almost every instance the main educator was female with high school being the highest level of education obtained. Similarly, White (1987) performed a demographic analysis of parents who home school in the state of Virginia. In a questionnaire sent to 100 randomly selected home schooling parents an analysis of general characteristics revealed most families to have two children, upper incomes, and focused upon providing a more child-centered educational program.

Three more recent dissertation projects provided demographic characteristics of home schooling parents in three different states. Mayberry's (1988) research described the demographic, religious, political, and educational attitudes and characteristics of home school families in the state of Oregon. Her research supported the conclusion that home schoolers were, on average, better educated, earning higher levels of income, and more likely to live in small residential areas than their fellow state citizens. Additionally, a greater percentage worked in either professional or technical fields and were more likely to attend church on a regular basis. Hines (1993) performed a similar in-depth analysis of home school families in the state of Arkansas. In addition to finding

demographic statistics similar to most of the previously mentioned studies, a comparison of standardized achievement test scores between Arkansas home school children and their public school counterparts at the fourth, seventh, and tenth grades found the home school student out-performing the public school students by as much as 21.54 to 29.73 percent higher. Breshears (1996) mailed a questionnaire to 250 randomly selected members of Idaho Home Educators. The results of this study indicate the mother is usually the teacher, there are usually three children, an average annual income of $40,000, the parent has completed two years of college, and 99% of the families attend religious services on a regular basis.

Three researchers who can be credited with four of the more extensive demographic analyses of home education families are Wartes (1987), Ray (1990, 1994) and Mayberry, et al. (1995). In 1984, Wartes implemented a statewide study in Washington State on behalf of legislators drafting compulsory attendance law. In responding to a written questionnaire, 441 home school families participated in the study. Wartes discovered Washington home school fathers were employed typically as professional or skilled workers, while mothers worked in the home. Most parents had some college education (nearly 80%), half had graduated from college and 17% had completed a Master's degree. The income of 31% was between $20,000 and $30,000, while 36% listed their incomes as $30,000 or above. Finally, the Washington State sample showed that 27% lived in small rural communities of 5,000 inhabitants or less while 31% lived in communities of 10,000 to 50,000 inhabitants. This study did not report on the group's religious characteristics (Mayberry, 1989).

Ray has conducted numerous studies on behalf of the National Home Education Research Institute. Two of his more recent projects compiled extensive demographic data on home school families in the state of Montana and Canada. In summarizing the responses of 170 Montana home school families, Ray (1990) found that 40.6% of the

families had two children being educated at home. About 72.9% of the families had been involved in home education for one to four years. Rural families comprised 50.9% of the sample. An annual income of $15,000 to $25,000 was reported by 35.2% of the families. The mother was the primary teaching parent 92.9% of the time. Of the primary teaching parents, 42.4% were high school graduates while 30% had four-year degrees. Interestingly, public school system facilities, equipment, or services were never used by 77.2% of these families.

In an even more extensive study performed by Ray (1994) in Canada, summary findings were provided on data collected from 808 families. The average formal education of the father was 14.0 years, or about two years of college; the average was virtually the same for mothers at 13.8 years. In terms of occupation, 45% of the fathers classified themselves as professional/technical and 12% as manager/administrator, while 89% of the mothers were in the homemaker/home educator category. The median annual family income was $40,000 with 62% of the families in the $20,000 to $49,999 annual income categories. Mothers performed 88% of the formal instruction of their children and the average number of children per family was 3.5.

Mayberry and her colleagues (1995) received 1,497 survey responses from families in Washington, Utah, and Nevada. In noting a large range of home schooling types, respondents were found to be better educated, more likely to work in professional or technical fields and more than twice as likely as the national population to attend church. Most were raised in Methodist, Episcopalian, Presbyterian or other "mainstream" religious institutions. About a third were currently members of Evangelical, Pentecostal or other "nondenominational" religious institutions. A small number of these were in non-traditional institutions that are sometimes called "New Age" (Lines, 1997).

The studies reviewed provide a general description of the contemporary home school family in the United States and Canada. The profile that emerges suggests that

home school families are generally well educated, more likely to reside in rural and small town communities, and the males are most often employed in professional or skilled occupations. Income levels tend to vary with the largest percentage found at or near the middle level. Religious affiliations are most often Protestant denominations and families generally subscribe to a conservative political philosophy. The number of children being home schooled in each family was most often two (Mayberry, 1989).

Sociological Studies

Sociological studies are the third and smallest area of home schooling literature and research found within the larger category of historical, demographic, and sociological studies. The studies found in this area generally attempt to dispel the perception of socialization as being inadequate in home schools due to the lack of peer association. One of the first studies to closely examine socialization in home schools was conducted by Taylor (1986). As part of this study, he analyzed the relationship between home schooling and the self-concept of children in grades four through twelve using the Piers-Harris Self-Concept Scale. Taylor used randomly selected home school families from across the United States in obtaining an estimated return rate of 45%. He found that the self-concept of home-schooled students was significantly higher than that of public-schooled students. As a result, Taylor believed his findings suggest that few homeschooling children are socially deprived.

Hedin (1991) performed a similar type socialization study of children in Texas Baptist churches to compare the self-concept scores of children in grades four, five, and six educated in three different settings: home schools, Christian schools, and public schools. Once again the Piers-Harris Children's Self-Concept Scale was used to determine self-concept differences. For Hedin, no statistically significant differences were found across school type, grade, or gender in the overall self-concept scores used as a measure of socialization skills.

Delahooke (1986), working in California, conducted additional research in the area of socialization and home-educated children. In developing a causal comparative-type study, she examined the social/emotional adjustment of nine-year-olds who were home schooled compared to those enrolled in religiously affiliated private schools. Delahooke used the Roberts Apperception Test for Children (RATC) to measure the children's social/emotional adjustment. As part of her findings both groups scored in the well-adjusted range of the RATC.

Montgomery (1989) investigated the effect of home-schooling upon the leadership skills of students between the ages 10 to 21 in the state of Washington. Through supportive research she identified a student's participation in extracurricular activities as being the main predictor of leadership in adulthood. Montgomery obtained a stratified sample of urban, rural, and suburban families from each of the three groups, e.g., home schooling parents, home schooling students, and a control group of conventionally schooled students. No significant difference was found in the participation rates of the two groups of students in most activities. Her findings suggest home educated students were not isolated from social and group activities and that home schooling may in fact nurture leadership as well as do conventional schools.

In a controlled study performed in the state of Florida, Sheirs (1992) videotaped the group play of 70 home schooled children and 70 school children between the ages of eight and ten for the purpose of comparing social adjustment between the two groups. Trained counselors viewed the videotapes and rated individual children. Also, the Piers-Harris Children's Self-Concept Scale was used to find self-concept scores higher than the national average in all age groups in both research populations. The trained raters, who were unaware of the home schooling or schooling status of the children, found fewer behavioral problems among the home schooled children. Sheirs concluded that appropriate social skills can develop apart from formal contact with other children.

Legal and Policy Studies

The second category of literature and research viewed as particularly relevant to the issue of home schooler's request for access to extracurricular activities were those studies with specific legal and policy considerations related to home schooling. This review will begin with a summary of five different studies that have performed a national analysis of state home schooling law and three legal analyses that visited the specific issue of request for extracurricular access. Secondly, a review of the literature revealed several commentaries and legal dissertations with certain policy implications that were state or regionally specific. No dissertation was found that dealt with the issue of access. The limited amount of literature and research found with policy implications was almost exclusively pro-home school with the expressed purpose of promoting greater cooperation between the public school and home schoolers. The final consideration was a review of the limited amount of research conducted in Illinois on home schooling in which no study or writing has been done on the issue of access. This clearly demonstrates the need for more scholarly work to be conducted on this issue in the future.

National Studies

As previously mentioned, Patricia Lines is generally viewed as one of the leading researchers on the issue of home schooling. One of her first projects was a masters level thesis on the issue of private education alternatives and state regulation (1983). Her study was one of the first to call attention to the issue of parents beginning to challenge state compulsory attendance laws. As part of her research she provided the legal framework for private or home schools which included both case law and state statutes. She also included a state by state analysis of compulsory school attendance laws complete with pertinent language from the law itself. Lines has continued to track the issue of home schooling as part of her research on behalf of the United States Department of Education. Her most recent work is characterized as a working paper on the issue of home schooling

with education policy makers in mind (1997). As part of her writing, she attempts to clearly define home schooling today and summarily recognizes much of the recent scholarly research conducted on various aspects of home schooling, i.e. demographics, rationale, achievement, socialization, legal parameters, etc. Additionally, Lines provided an appendix of a state by state analysis of home schooling requirements in the United States. This useful summary is based on recent statutory analysis and includes recent relevant statutory language as well as its citation, requirements for home teachers and standardized testing, and whether the statute gives officials the authority to disallow a program.

The only known dissertation project that focused on the issue of a state by state analysis of home schooling law was performed by Yastrow (1989). As part of her extensive legal research she provided both statute and case law summaries for each of the 50 states in order to appropriately group or label them. In grouping the 50 states Yastrow derived four categories of states. The first and largest category were "explicit language" statute states. In other words, these were states with statutory wording that specifically allowed for home instruction. A second category were "equivalency language" statute states, which simply require attendance in public schools "or their equivalent." The third type of identified state were those that "qualifies as private school" states. In these states their courts or state boards of education construe "private schools" to include home instruction. The final category was "silent language" statute states. These states have no statutory language beyond a bare compulsory attendance law. For each of the last three categories Yastrow provided a summary of recent case law used to more clearly define an individual state's legal position on home schooling.

Gordon, Russo, and Miles (1994) performed an extensive legal project on home schooling on behalf of the National Organization on Legal Problems of Education. In addition to providing an extensive historical and legal framework on home schooling

movement, these legal researchers provided a national overview of state controls over home schooling. Included in Gordon, Russo, and Miles overview were both verbal and chart summaries of where each state stood on a variety of home school related issues. These issues included relevant state statutes, states which require notice/approval requirements, and those states requiring teacher qualifications and student standardized testing. The greatest value of this study was the depth of detail provided and that its findings could be used to compare with studies performed on behalf of the Home School Legal Defense Association (HSLDA), i.e. Klicka (1997), McGarvey (1998).

In a research project conducted on behalf of the Illinois State Board of Education or more specifically the Regional Offices of Education, William Kested (1997, 1998) performed a national survey of each state's laws and regulations addressing home schooling. In gaining a response from each of 49 state departments of education, Kested hoped to provide a contextual backdrop for Illinois' extremely lenient position. Information on eight different categories of home schooling regulation were provided on each state and results of each category were summarily provided in both verbal and chart form. Categories included state requirements for registering, filing a roster, teacher qualifications, following a certain program of education, being in session a certain number of days and/or hours, attendance reporting, evaluative assessment, and maintaining records, e.g. grades, health, portfolios, etc. Kested concludes his research with seven different recommendations for providing greater accountability for home schooling in Illinois.

Deckard's (1994) extensive legal research was designed to serve as a guide for parents interested in home schooling and regulations of their state, educators interested in the issues raised by the notion of home schooling, and state law-makers who might be interested in what other state legislators are doing concerning this issue. The content of his research provides the requirements that must be met in order to comply with each

State's Compulsory Education Law in a home school situation. Summarized compilation of these requirements was provided in both a well worded state by state analysis and a 50 state comparative summary chart. Relevant data was collected from each of the Chief State School Officers or their delegated authorities.

One of the most comprehensive studies performed on home school law was conducted by Christopher Klicka (1997) on behalf of the Home School Legal Defense Association (HSLDA). Because this study was performed on the basis of analysis of the actual statute or case law involved, any perceived bias was extremely limited. On a state by state basis Klicka provided the actual wording for each of the following requirements: compulsory attendance ages, day and/or hours of instructions, subjects, teacher qualifications, and standardized testing. In addition, those states with specific home schooling statutes or case law which define their position had these issues clearly defined and the actual wording was provided. Klicka also attempted to verbally summarize and categorize the relevant home school legal issues for all 50 states. Highlights of this summary include 37 states having adopted home school statutes or regulations, 41 states do not require home school parents to meet any specific qualifications, and 26 states require standardized testing or evaluation.

One of the first known pieces of legal commentary on the issue of access was authored by Bjorklun (1996). In a piece of legal research entitled "Home schooled students: Access to public school extracurricular activities," he pointed out that with the legalization and growth of home schooling many have begun to seek a return to the public school for participation in activities that cannot be provided at home. His commentary provided background on the home schooling movement, however, the majority of his work focused on the legal issues surrounding participation of home schooled students in extracurricular activities program of the public schools. Bjorklun provided an excellent accounting of some of the key legal arguments on both sides of the

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issue of access that have recently emerged from case law. His analysis included Thomas v. Allegany County Board of Education (1982), Snyder v. Charlotte Public School District (1984), and Bradstreet v. Sobol (1995), in addition to an update of existing state statutes which currently allow home school access.

In a similar, yet much shorter legal analysis on the issue of access, Klimesh (1997) authored a legal article entitled "Non-enrolled students' participation in public school sports programs." This researcher equated the recent home school access litigation with most of those cases addressing the issue of a private student's right to participate in athletic programs. In addition to Thomas, Snyder, and Bradstreet, she provided and analysis of Swanson v. Guthrie Independent School District No. 1-1 (1996) and Kaptein v. Conrad School District (1997). Klimesh (1997) concluded that most courts that have addressed the issue of access have applied the rational basis analysis and have generally enforced the public school's eligibility requirements of full-time enrollment in the public schools.

One of the most recent and comprehensive pieces of legal research done on the issue of home schooler's request for access to public school extracurricular activities was performed by Stephen McGarvey (1998), on behalf of the Home School Legal Defense Association (HSLDA). McGarvey authored an issues analysis entitled "Equal access: Participation of home schooled students in public school activities" in which he defined the association's position on this issue as well as providing pertinent legal facts. It was clear from both telephone conversations with McGarvey and their position statement, that HSLDA is not presently willing to litigate this issue, nor campaign for new access laws. This has as much to do with their stated position that "HSLDA's primary purpose is to protect families' right to home school" (McGarvey, 1998, p. 1). It was clear that McGarvey (1998) presently is one of the foremost experts on the issue of access despite his own acknowledged research limitations. According to his findings only ten states

currently force public schools to allow home schoolers access to classes or sports part-time (See Appendix B). Typically, home schoolers in these states must meet three different requirements. "First, the student must be in compliance with the state home school law. Second, the student must meet the same eligibility requirements as a public school student. Finally, the state requires the student to verify that he or she is passing his or her core subjects" (McGarvey, 1998, p. 2). Bjorklun (1996), Klimesh (1997), and McGarvey's (1998) analyses of this issue as well as key case citations serve as much of the foundation for the legal and regulatory analysis that will follow in Chapter III.

State or Regionally Specific Studies

Other types of recent legal studies found on the issue of home schooling were those that researched issues that were either state or regionally specific. The most useful studies were three regionally specific legal commentaries performed on the issue of home schooler's request for access to public school activities. Lukasik (1996, 1997) authored two of these pieces of legal research that analyzed the issue of access as it pertained to the state of North Carolina. The first and longest of the two legal commentaries provided a detailed accounting of the history of home schooling in the United States and its present legal standing. Lukasik (1996) built the case that there is no constitutional authority or state interest that would support a policy requiring public schools to admit home schooled students on a part-time basis. Likewise, there is no authority or interest that supported a policy requiring public schools to exclude all students who seek part-time admission. Lukasik advocated a position of neither yes nor no on this issue. Instead she called for a policy that would allow educational officials to use their regulatory and discretionary authority to admit or deny part-time enrollment of home educated students on a case-by-case basis.

The second and shorter Lukasik (1997) legal article can be viewed as an extension of her first piece. Following a thorough review of relevant federal and state law, she

concluded once again that neither existing federal law nor the existing state law requires public schools to enroll home schooled students on a part-time basis. In addition, Lukasik concluded that under North Carolina law, public schools were not prohibited from admitting such students. Instead, it is believed that local school boards have the discretion to determine, on a case-by-case basis, whether or not to permit home schooled students into a particular class in a public school.

A third and particularly relevant legal analysis was performed by Nielson (1998) in reviewing a Montana Supreme Court case of a private schooled student's request to participate in her local public school's extracurricular activities. This legal commentary of the case of Kaptein v. Conrad School District (1997) made several significant criticisms of the high court's findings. Nielson did not necessarily disagree with the Supreme Court's ruling, but rather took exception with its reasoning. He offered three direct criticisms of the ruling. First, the court erred by not applying the rational relationship test rather than an intermediate scrutiny test. The more strict intermediate scrutiny test in effect, nullified the Board's judgment and put into question the Board's freedom to effectively oversee the public schools without outside interference. Second, the court erred in finding that the plaintiff's right to participate in extracurricular activities was analogous to the rights of the students in another cited case. Third, and most importantly, the Montana Supreme Court erred in failing to address Montana's constitutional prohibition against appropriating public money in direct or indirect aid of religion.

Several legal dissertations and commentaries proved useful for examining both the type and structure of home school research recently carried out. One of these type of studies was conducted by Lindley (1985) in the state of Indiana. The purpose of his study was to survey and report upon the current attitudes of public school superintendents in Indiana regarding the problems associated with home schooling, and to recommend

solutions to the problems identified. The primary legal analysis was provided in Chapter II of his dissertation as part of pointing out the delicate balancing act of the courts with regard to protecting the rights of individuals and the rights of the state to an educated citizenry. Lindley concluded his research with four overriding recommendations on home schooling that had particular relevancy for administrators in the state of Indiana.

Lotzer (1987) performed a legal study of home schooling in the state of Texas. He described the legal status of home schooling in Texas as unclear. The Texas Education Code provided no indication of whether a home school falls within the private school exception to the state's compulsory attendance provision. In addition, Texas courts had not established clear precedents with regard to home schooling, leaving both school districts and parents in need of clarification on this issue. Lotzer called for the Texas Legislature to take some type of position on the issue by passing meaningful legislation that would provide both parents and educators with some guidance.

A third regionally specific legal study was performed by Cochran (1995) on behalf of the home schooling movement in the state of Georgia. Beside conducting historical research on the movement itself, this researcher took an in-depth look at the legal struggles of three Georgian home schooling families that were found in violation of the state's compulsory attendance laws. Their plight proved to be almost solely responsible for the formation of a lobby that helped secure a new law favorable to home educators in 1984. Cochran concludes with a close examination of the type of schooling provided by the three home schooling Georgian families and also offers an update of the children's lives since the controversy.

The fourth study could easily be viewed as both a national and regionally specific legal analysis. Strout (1993) used Oklahoma, Kansas, and Missouri to represent his three major classifications of home schooling states. Those three classifications include: home schooling allowable states, anti-home schooling states, and legalized home schooling

states. Statutes in Strout's three middle-America states closely resemble the laws in the three major categories of states found in the United States. Strout also appropriately points out the controversy between states and parents due to the question of who has final authority over a child's education. This study concludes with a thorough exam of the degree of cooperation found in the three major classifications of states, between the states and the parents, and also reviews various difficulties; comparisons, and contrasts related to home schooling in individual states.

The final study with a state specific legal analysis was performed by Piippo (1997) in the state of Idaho. This study proved to be the most useful because of its close examination of Idaho's dual enrollment law (Idaho Code 33-203). In essence the creation of this law in 1995 in the state of Idaho allows both home school and private school students to have access to certain public school activities. The law specifically allows dually enrolled children access to both academic classes and extracurricular activity programs within the schedule and scope developed by each of the public school districts of Idaho. The primary intent of Piippo's research was to analyze the impact of Idaho Code 33-203. This analysis was carried out by examining the results of a survey sent to 112 school district superintendents in the state and based upon a return rate of 59 percent. This study concluded with both an analysis of the results of the survey and recommendations for making Idaho's dual enrollment law even more effective in the future for public school officials and parents who chose home or private schooling.

Policy Studies

In conducting a review of literature and research with policy implications two overriding conclusions were reached. The first was that once again the amount of research that has been conducted in this area is extremely limited and no study focused directly on the issue of access to public school extracurricular activities for home schoolers. However, indirectly the issue of access was addressed in all the literature with

policy implications, because the overwhelmingly pro-home schooling bent promotes a spirit of cooperation between the home schoolers and public school officials.

Wartes (1988) produced quantitative analysis of home schooling in the state of Washington with the expressed purpose of helping legislators make informed policy decisions in the future. In receiving 219 surveys from home schooling families in the state, Wartes reached several conclusions with policy implications based on the data analyzed. One of the first conclusions reached was a weak relationship between parent education and student outcomes did not justify future policy decisions based upon parent education levels. A second finding was that policy decisions that would require a home schooler to have contact with a certified teacher were not supported by the data. A third finding with policy ramifications suggested that there was virtually no relationship between level of structure or hours per week of schooling and academic outcomes. As a result, policy decisions that might impose a curriculum for the sake of its structure or requiring minimum hours per week of schooling were not supported by the results of the data and neither were any other relationship issues examined, i.e. grade level, parent income, etc. Wartes was clearly an advocate of home schooling and believed policy makers attempts to judge home schools must be solely outcome based.

Knowles has performed numerous studies advocating the merits of home schooling, but two in particular can be viewed as policy oriented. The first study was performed solely by Knowles (1989) in the state of Utah. As part of a longitudinal study, he collected ethnographic research from 22 home school parents and six different family home schools. As part of his findings, Knowles was quick to point out that the courts have often advised school boards to explore avenues for cooperation with home schoolers and he concluded with advocating the position that many boards have voluntarily taken to make explicit a policy of cooperation. A key ingredient to a policy of cooperation with

home school parents is the need to overcome stereotypes and a willingness to work with people who may think differently about education.

Knowles also worked with Mayberry and Ray (1991) in conducting an extensive study of home school families in Utah, Nevada, Washington, and Oregon. As part of this study, 1,497 home schooling families were questioned about their interest in the use of public school facilities, services, and resources. The parents in this study expressed interest in services that would facilitate home-based instruction without interfering with their particular philosophical or religious values. These services included receiving guidance on effective teaching methods, having access to public school libraries and curriculum materials, and obtaining information about educational research on home schools. Once again these researchers advocated the development of public school policy that would seek a cooperative working relationship between home school families and their local public school.

Mayberry also advocated keeping an open dialogue between home school parents and professional educators in the discourse on future policy considerations co-authored with Knowles, Ray, and Marlow (1995). She believes that current political and legislative indicators demonstrate that the current trend in the nation is to permit home educators access to a variety of public school facilities and services. As a result of this pressure and the struggle that exists between the competing moral visions of home schooling parents and the professional education establishment, Mayberry believes an open public discourse between both sides is the best way to bring about well-informed policies that foster cooperation and preclude further polarization.

In a second writing with policy considerations, Mayberry (1992) focused on the role higher education could be playing in furthering a cooperative spirit and ultimately the cause of home education itself. Mayberry outlines three implications that would develop from higher education serving parents engaged in home instruction. First, higher

education could provide courses for home educators to increase their effectiveness. Second, higher education has the ability to facilitate an arena where contrasting perspectives on home education could be discussed. Third, open channels of communication could help build cooperative relationships among communities, schools, and parents. Once again this researcher advocates the public school arena, particularly higher education, to seek policies that would enhance a cooperative relationship between home educators and themselves.

Two final recent writings also promoting cooperation were written by Harbottle (1995) and Ramsey (1992). In his legal dissertation Harbottle analyzed current statutory and case law relating to home education. He reached the conclusion that the best solution to the battle over rights was to seek a cooperative relationship between parents and school authorities and loosen the rigid stance regarding rights. Similarly, Ramsey points out some of the problems that can arise from an intolerant or inflexible attitude on the part of a public school administrator toward home schoolers. She encouraged school leaders "to establish a climate of mutual respect and even mutual benefit and cooperation" (p. 24). Also, Ramsey points to dual enrollment policies established in California and Iowa as positive examples of this type of philosophy.

Illinois Studies

This final section of the review of literature focuses on the limited number of studies that have been conducted on home schooling in Illinois and the fact that three out of four of these studies focused on legal and/or policy issues. There is good reason to believe that the legal bent on the majority of these projects is due to them being authored by various public school officials who have concerns over Illinois' liberal regulatory position on home schooling. Despite the legal and policy concerns of the majority of Illinois studies it was clear that little has been written or researched on the issue of home schooler's request for extracurricular access either nationally or in Illinois. As a result

this study will prove useful for its original nature and will serve as a foundation for future legal and policy research in this area.

The first known study conducted in Illinois on home schooling was carried out by Frost (1987). This particular descriptive research was of little usefulness to a study dealing with the issue of extra curricular access, because it focused almost solely on measuring the academic achievement of home schooled children. In attempting to measure academic achievement in home schooled children, Frost focused on 74 home schooled children in grades three through six and located in a five-county area of northeastern Illinois. Each student was given the Iowa Tests of Basic Skills. In general, home schooled students did as well or slightly better than the national norms and as a result the researcher concluded that these children had not suffered from their home school experience.

Another Illinois study was carried out by DeRoche (1993) and provided greater usefulness to the project at hand. This researcher clearly outlined the history and legal background of home schooling in the United States and through reference to People v. Levinson (1950) was quick to point out Illinois' treatment of home schools as private schools. In noting that little research on home schooling had been carried out in the State of Illinois, DeRoche focused on surveying the perceptions of the state's 57 regional superintendents on the status and regulation of home schooling in the state. An outcome of DeRoche's survey in which 55 of 57 regional superintendents responded, were eight noteworthy recommendations that were also cited in Kested's research (1997, 1998). They include: (a) the state of Illinois developing a concept of "educational neglect"; (b) that all home schooled parents be required to register their children; (c) periodic standardized achievement testing be instituted; (d) home schooling parents be required to pass some type of basic competency test; (e) regional superintendents be given greater authority to monitor home schools; (f) developing due process procedures for dealing

with disputes resulting from regulation; (g) promoting cooperation between the home school and public school; and (h) developing special regulations for students in need of special education.

The final two known studies carried out by Illinois researchers Yastrow (1989) and Kested (1997, 1998) were previously noted in the section entitled National Studies. Both researchers provided a state by state analysis of home schooling laws and regulations, but fell short of dealing with the issue of home schooler's request for extracurricular access. As a result, these studies proved helpful for providing a contextual legal and regulatory framework of where Illinois generally stands on the issue of home schooling in comparison to the other 49 states. However, they also serve as supportive evidence of the need for this study which focuses on a more specific aspect of home schooling. This specific aspect being the issue of access as it pertains to home schooler's request for certain public school extracurricular activities. This study is intended to provide the Illinois High School Association (IHSA) both the legal and regulatory contextual background necessary to develop well supported future policy.

CHAPTER III

SOCIAL HISTORIOGRAPHY AND LEGAL CASE METHODOLOGY

Review of Home Schooling's General Legal Standing

In a review of the legal standing of home schooling in the United States it is important to keep in mind that the founding fathers did not make reference to education in the United States Constitution. The Tenth Amendment to the United States Constitution does provide that "the powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the People." As a result, there has been a continuous struggle between the states and the people who retains the power to control education (Peterson, 1985).

The state's interest in regulating education stems, in part, from its generally accepted interest in the personal development and minimal competency of its citizenry. This sovereign power has been established under the legal doctrine of *parens patriae*. According to this doctrine the state has the parental authority and legal right to look after children who have been neglected by their parents or are not legally competent to act in their own best interest (Henderson, Golanda, & Lee, 1991; Lukasik, 1996; Peterson, 1985; Randall, 1992). In assuming guardianship, the state functions as a substitute parent in assuring the well-being of the child. A significant part of this well-being is an adequate education (Randall, 1992).

In supporting that state's sovereign power of guardianship over its citizenry, the courts have protected the state's right to enact compulsory attendance laws. The intent of these laws are to insure that each child receives an adequate education and are protected from parental neglect. However, these laws do not compel all children to attend only

public schools. In Pierce v. Society of Sisters (1925), the Supreme Court held that children could attend public, private, or parochial schools (Henderson, Golanda, & Lee, 1991). Although the United States Supreme Court has never directly confronted the issue of home education, there are four cases that are generally recognized as establishing certain principles and guidelines for the courts to follow when confronting this issue (Burgess, 1986; Gordon, Russo, & Miles, 1994; Lukasik, 1996; Peterson, 1985; Richardson & Zirkel, 1991; Tompkins, 1991).

The first case involved a successful Supreme Court challenge to the state's right to regulate education. In Meyer v. Nebraska (1923), the Court established the principle that the state's right over education was not absolute (Richardson & Zirkel, 1991). The Court found unconstitutional a Nebraska law which prohibited any teacher, whether in a public or non-public school, from teaching a modern language other than English to children not yet having completed the eighth grade (Gordon, Russo, & Miles, 1994). The state had argued that it had an interest in creating an educated American citizenship "prepared readily to understand current discussions of civic matters" (Meyer, 262 U.S. at 402). While recognizing the state's power to compel attendance and establish reasonable regulations for all schools, the Court struck down the law on the basis that it violated a parent's Fourteenth Amendment liberty interest in his child's upbringing and infringed unreasonably upon the rights of teachers to teach (Burgess, 1986; Gordon, Russo & Miles, 1994). In Meyer, the Court said that "[the teacher's] right to teach and the right of parents to engage him so to instruct their children . . . are within the liberty of the [fourteenth] amendment" (Meyer, 262 U.S. at 400).

Two years later Meyer served as the basis for the Court's landmark decision in Pierce v. Society of Sisters (1925). In Pierce, the Court struck down an Oregon statute requiring children to attend public schools on the grounds that it violated the Fourteenth Amendment (Burgess, 1986). The Court held that the state law "unreasonably interfered"

with the business and proprietary interests of the private schools as well as "the liberty of parents to direct the upbringing of children under their control" (Pierce, 268 U.S. at 534-535). In spite of the fact that the parents were not the represented plaintiffs in this case, the Court emphasized not only their liberty interest in procuring their child's education, but also the "high duty" to direct that education (Peterson, 1985; Richardson & Zirkel, 1991). The Court has consistently reaffirmed this position, despite being confronted with direct attempts to circumvent its ruling (Peterson, 1985).

A third example of the Supreme Court clarifying the state's educational authority was a case involving a Hawaii statute designed to regulate private schools to the extent that they would be virtually indistinguishable from public schools. In Farrington v. Tokushige (1927), the Court struck down a statute that regulated the use of textbooks, teacher qualifications, curriculum, language spoken in the classroom, entrance qualifications and attendance requirements (Burgess, 1986). In applying the due process clause of the Fifth Amendment to its ruling, the Court found the federal law in the Territory of Hawaii as too restrictive of the private schools in question (Tompkins, 1991). In acknowledging the state's right to regulate private schools, the Court stipulated that this right could not be so extensive as to effectively eliminate the alternatives offered by private schools. Additionally, the Farrington Court set forth the principle that the state cannot excessively control the terms and content of nonpublic schools, so as to steal their character as alternatives to public schools (Richardson & Zirkel, 1991).

The previous three Supreme Court decisions established the due process framework for the constitutional limits on the state's power to require and regulate education. The issue of state authority versus parental authority remained relatively silent for almost half a century until the Court directly confronted the issue in Wisconsin v. Yoder (1972) (Richardson & Zirkel, 1991). In Yoder, Amish parents objected to Wisconsin's compulsory attendance law. The parents argued that sending their children

to school beyond the eighth grade, would expose themselves to censure by the church and endanger not only their own salvation but also that of their children (Peterson, 1985). The plaintiffs further contended that the compulsory school attendance statute interfered with their First Amendment rights of free exercise of religion and the due process clause of the Fourteenth Amendment. The Court ruled in favor of the Amish First Amendment claim in emphasizing the unusual and idiosyncratic character of the Amish religious claim: "[The Amish made] a convincing showing, one that probably few other religious groups or sects could make . . . " (Tompkins, 1991, p. 305).

The extended applicability of Yoder for other religious groups and most recently home schoolers has proven to be doubtful at best. The Yoder Court was careful to narrowly define its criteria for religious exemption. The Court commented:

> [The Amish made] a convincing showing, one that probably few other religious groups or sects could make, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish. (Yoder, 406 U.S. at 235-236)

As one commentator puts it, "The extended applicability of Yoder, even for other religious groups is dubious. One is hard pressed to give an example, outside the Amish, where the Court's narrowly defined criteria for a successful First Amendment challenge would be met" (Tompkins, 1991, p. 305).

Despite its holding in Yoder, the Supreme Court wished to emphasize its support of the state's interest in requiring a compulsory education of its children. Chief Justice Burger, writing for the majority warned: "Nothing we hold is intended to undermine the general applicability of the State's compulsory-attendance statutes or to limit the power of the State to promulgate reasonable standards" (Yoder, 406 U.S. at 236). Thus, in a recent North Carolina case, a federal appeals court demonstrated Yoder-narrowness in

ruling against a religiously motivated parent. In Duro v. District Attorney (1983), the plaintiff refused to send his children to school because he believed they would be corrupted by others not sharing his family's religious beliefs. Unlike the Amish children who attended public schools for eight years, Duro refused to enroll his children in any school for any length of time. Therefore, in balancing the plaintiffs religious beliefs against the state's interest in education, the court found "the balance in this case tips in favor of the state" (Duro, 712 F.2d at 96).

Other recent court decisions unfavorable to home schoolers provide consistent continued confirmation of the Yoder decision. In State v. Riddle (1981), a West Virginia court strongly rejected a parent's asserted religious right to ignore a compulsory state education law. The state court found it "inconceivable that in the twentieth century, the Free Exercise Clause of the First Amendment implies that children can lawfully be sequestered on a rural homestead during all of their formative years to be released upon the world only after their opportunities to acquire basic skills have been foreclosed" (Riddle, 285 S.E.2d at 359). In Johnson v. Board of Education (1983), the Iowa Supreme Court ruled against Baptist parents claiming an Amish Exception for educating their children in schools staffed by non-certified teachers. This ruling stated that Baptist children were not enough like the Amish, because they lived in ordinary residential neighborhoods (Gordon, Russo, & Miles, 1994). In State v. Schmidt (1987), the Ohio Supreme Court held that the state's explicit-exceptions law, which requires that home education programs be approved by the local school superintendent, did not violate the free exercise clause. Similarly, North Dakota's highest court held in State v. Patzer (1986) that a teacher certification requirement in the state's home schooling statute did not violate the free exercise clause (Richardson & Zirkel, 1991).

Variability in Statutory Considerations

Recent home schooling legal analyses support the notion that there is considerable variability in the laws that govern this type of schooling (Burgess, 1986; DeRoche, 1993; Gordon, Russo, & Miles, 1994; Kested, 1997; Klicka, 1997; Lines, 1997; Richardson & Zirkel, 1991). Currently, all 50 states have compulsory education laws and have decided to allow home schooling to meet this requirement. Despite the general legalization of the practice nationwide, there remains considerable variation in the types of existing state statutes (Lines, 1997). Many legal analyses divide home schooling statutes into one of three general categories. The first category specifically provides for home schooling. A second category provides an implicit allowance for home instruction. The last category consists of those states that make no allowance for home schooling beyond the possible qualification as a private school (See Also Appendix A); (Burgess, 1986; DeRoche, 1993; Klicka, 1997; Peterson, 1985; Richardson & Zirkel, 1991).

The overall trend in recent years has been in favor of home instruction, making it an explicit alternative to compulsory institutional education under specific circumstances or criteria (Richardson & Zirkel, 1991). In two of the most recent legal studies performed on the issue of home schooling laws, Kested (1997) and Klicka (1997) found 37 states which have adopted home school statutes or regulations. These would be Category One states with specific laws or regulations on the books acknowledging the right of children to be formally educated at home (Lafee, 1998). Category Two states have made an implicit allowance for home schools. In these states statutory language permits home schools to designate themselves and operate as private schools or religious schools (Richardson & Zirkel, 1991). According to Gordon, Russo, & Miles (1994), Kested (1997), and Klicka (1997), there are at least 13 states where home schools may operate as private or church schools. The third and final category of home school statute or regulation are those states which make no allowance for home schooling beyond their

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recognition as a private school. This category (Category Three) can be viewed as a sub-category of Category Two and contains those states which virtually do not regulate home schools at all. Presently, four states have virtually no regulation of home schooling whatsoever based on the regulatory criteria set forth in four recently performed analyses (Gordon, Russo, & Miles, 1994; Kested, 1997; Klicka, 1997; Lines, 1997).

Home Schooling in Illinois

Illinois can be viewed as one of four states that is generally looked upon as belonging to Category Two and Category Three. That is, home schooling's legal standing comes from its qualifications as a private school through the interpretation of the courts. In addition, private schools are virtually unregulated in Illinois and as a result home schools are as well (Barbre & Turner, 1996; DeRoche, 1993; Kested, 1997). In 1909, the Illinois State Legislature established a compulsory attendance law requiring all children to attend either a public or private school. In 1945, the law was amended to read as it still reads today (Barbre & Turner, 1997). According to this statute (105 ILCS § 5/26-1), if a child is "attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in public school," and where instruction is in the English language, the child is in compliance with Illinois compulsory attendance law. Home schools which meet these two minimal requirements are considered legal private schools (Klicka, 1997, p. 31).

Any questions left unanswered as to home schooling's legal status in Illinois have been clarified by the courts. Two cases are generally accepted as defining the legal standing of home schooling in the state. They are People v. Levinsen (1950) and Scoma v. Chicago (1974) (Kested, 1997; Klicka, 1997; Richardson & Zirkel, 1991). In People v. Levinsen (1950), the Supreme Court of Illinois overturned the conviction of home school parents under Illinois public-or-private-school-only compulsory attendance law. The Levinsens had appealed their conviction on the belief that the state had failed to prove

their child was not attending a "private school" within the intent of the legislation. The Levinsens, Seventh Day Adventists, were instructing their seven-year-old daughter at home because their strong conviction that instruction with other children produced a competitive, "pugnacious" character, and that the public school atmosphere was not conducive to fostering faith in the Bible (Richardson & Zirkel, 1991).

In overturning a lower court conviction of the Levinsens, the Supreme Court did not agree that these parents had violated compulsory attendance law. The court clarified the purpose of compulsory education laws as follows:

> Compulsory education laws are enacted to enforce the natural obligation of parents to provide an education for their young, an obligation which corresponds to the parents' right of control over the child, and the object of Section 26-1 of the School Code, requiring children to attend school, is all children shall be educated, not that they shall be educated in any particular manner. (Levinsen, 90 N.E.2d at 215)

Additionally, the Court defined a private school as: "a place where instruction is imparted to the young . . . the number of persons being taught does not determine whether a place is a school" (Levinsen, 90 N.E.2d at 215). While holding that home instruction would qualify under Illinois statute, the Levinsen court emphasized the decision did "not imply that parents may, under the pretext of instruction by a private tutor or by the parents themselves, evade their responsibility to educate their children" (Levinsen, 90 N.E.2d at 215).

Nearly 25 years later, a federal district court reasserted Levinsen's holding that home instruction could, so long as commensurate with public school standards, qualify as a private school (Richardson & Zirkel, 1991). In Scoma v. Chicago Board of Education, the parents contended that the Illinois compulsory attendance law abridged their constitutional right to educate their children "as they see fit" and "in accordance with their determination of what serves the family's interest and welfare" (Scoma, 391 F.Supp at 452, 461). In this case, the court ruled that the Scomas had failed to show any

"fundamental right which has been abridged by the compulsory attendance statute" (Scoma, 391 F.Supp at 452). The court balked at going beyond Levinsen, and the judge pointed out that the parents' constitutional right to guide their children's education is a limited one; "it merely provides parents with an opportunity to seek a reasonable alternative to public education" (Scoma, 391 F.Supp at 452). In referring to Levinsen, the Scoma Court emphasized that the burden of proof rests with the parent to show that a plan of home instruction qualifies as a private school (Yastrow, 1989).

The Issue of Access

Today, most home schooling legal experts concur with the notion that home schooling is legal in all fifty states (Klicka, 1997; Lukasik, 1996). As a result of home educators being successful in establishing home schools as legitimate, independent of the public schools in their districts, a significant number of them are seeking a new expanded kind of relationship with public schools on their own terms (Lukasik, 1996; Mayberry, 1995). Mayberry, Knowles, Ray, and Marlow (1995) in an extensive survey of 1497 home schooling families in the states of Washington, Utah, and Nevada found "a large percentage of parent educators wish to enroll their children part-time in extracurricular activities (81%) and academic courses (76%) [at the public schools in their districts], and they also desire to make use of public school libraries and curricular materials (64%)" (p. 71). Clearly, these parents are more eager "to accept educational resources and assistance when it is not governed or regulated by government school district personnel" (p. 71).

This relatively new issue, the request for access to public school classes or extracurricular activities part-time, once again pits the rights of home educators against the interests of the state, but with an ironically different twist. Home schooling parents are no longer struggling to keep their children out of public schools as in the past. Instead, parent educators are seeking permission to send their children to public schools on a "part-time" basis while retaining their home school status. Additionally, public

school administrators are no longer policing home schools to bring home schooled children back into public schools. Rather, most often citing the "administrative burdens" connected with admitting a home schooled child on a part-time basis, state officials have been less than willing to welcome this new relationship between home and public education (Lukasik, 1996).

Opposition to home schooled students gaining access to classes or extracurricular activities has come primarily from local school administrators and boards of education, state interscholastic athletic organizations, and national organizations like the American Association of School Administrators and the National School Board Associations. In general, opposition has focused on the idea that a public school's main responsibility is to serve its own students. Allowing home schooled students access could take some opportunities away from the regularly enrolled students. Additionally, public school students must meet several attendance and academic requirements in order to be eligible to participate in certain extracurricular activities and there is no way to ascertain whether a home schooled student has met the same requirements (Bjorklun, 1996). Another commonly held argument is that local districts receive no county or state money for students not enrolled and as a result this can become burdensome financially as well as administratively (McFarland, 1997). A final popular position held in administrative circles is that this is an issue of choice and the fact that they believe there are consequences of the home schooler's choice to home school. As one New York State Athletic Association official put it: "If I decide to send my child to a private school or keep them home to teach, then I must accept the results of that action. I may have to pay tuition. My child probably won't have the benefit of playing on the school team. Parents and children have to weigh these pros and cons, make their choice and live with it" (Lafee, 1998, p. 22).

McFarland (1997) quoting Michael Smith, vice-president of the Home School Legal Defense Association (HSLDA), provides an extensive list of several of the key arguments being raised on behalf of home schoolers seeking access to public school activities, particularly extracurricular activities:

> 1. Home schoolers pay taxes to support the public school program; thus, they should not be barred from the option of participation.
> 2. With the increased opportunity for college scholarships available through sports/other activities in public schools, home schoolers should be given the opportunity to obtain these scholarships as well.
> 3. For those home schoolers who are gifted in athletic and/or other special areas, they should be able to enhance their talents through controlled interaction with public school programs/competitions.
> 4. Some home-school parents would have to terminate their home-school program because there is no other way for their child to benefit from these cocurricular activities. (p. 23)

According to Bjorklun (1996), Lukasik (1996, 1997), and McGarvey (1998), there have been several constitutional arguments advanced on behalf of home schooling students seeking part-time public school access. The first of these centers on the claim that denying home schooled students access to part-time classes or extracurricular activities denies them due process (5th and 14th Amendments) to their property interest in the free public education provided for by state constitutions. Secondly, home schooled students excluded from part-time activities are unjustifiably discriminated against, denying these students their right to equal protection (14th Amendment) under the law. The third argument focuses on the notion that a student not enrolled in public school because of a sincere religious belief, has his right to the free exercise of his religious beliefs burdened (1st and 14th Amendments) by the prohibition of access to public school activities. The courts have regularly rejected these constitutional claims. In virtually every instance, they have found that a school district's refusal to allow access to classes part-time does not violate the student's constitutional rights to due process of law, equal protection under the law, or free exercise of religion.

Present Status of Access Legislation

Even if the federal Constitution creates no such obligation, it is fully within the authority of an individual state to create an obligation for public schools to allow home schoolers access to classes or extracurricular activities part-time. Likewise, it would appear that individual states are also within their legal authority to create legislation which denies home schoolers part-time access to public schools. Currently, the majority of state legislatures have left the discretionary decision of enacting policy on the issue of access to the local public school boards (Lukasik, 1997). This situation has left certain home schooled students, parents, and advocacy groups with the task of convincing state legislatures to pass statutes that would specifically allow home schoolers access to classes or extracurricular activities part-time (Bjorklun, 1996).

According to McGarvey's (1998) legal analysis performed on behalf of the Home School Legal Defense Association (HSLDA), ten states currently force public schools to allow home schoolers access to classes or extracurricular activities part-time, with at least 15 additional states having considered or presently considering access legislation. They are Arizona, Colorado, Florida, Idaho, Iowa, Maine, North Dakota, Oregon, Utah, and Washington (See Appendix B). All of these states, with the exception of Utah, have passed equal access laws. Utah requires access by means of the state office of education requirements rather than statute. In Arizona, Florida, and Oregon, the law requires local school districts to allow access to "interscholastic" activities. In Colorado, North Dakota, and Washington state statute allows home schooled students access to a variety of public school instructional activities as well as interscholastic athletics. Iowa and Idaho are unique in that their statutes permit home schoolers to request that their child be registered in the public school for dual enrollment purposes. Any dually enrolled student may then enter any program in the public school available to other students. In Maine the law grants home schooled students access to public school resources and materials, but

participation in any regular school program, either instructional or extracurricular, is conditioned upon approval by the local superintendent or the superintendent's designee (Bjorklun, 1996).

Types of Access Case Law

As more parents are making the choice to homeschool their children, there are also increasingly more requests for these children to be able to participate in their resident public school's extracurricular activities and sports programs (Klimesh, 1997). When this type of request results, as it often does, in a denial of access, parents of home schooled children have often sought legal redress (Bjorklun, 1996). According to McGarvey (1998) access cases break down into two major categories: litigation over general extracurricular activities and litigation over interscholastic activities. As part of the extracurricula cases, the home schooling family has usually sued the local school district for access to classes like band, higher mathematics, or sciences.

Klimesh (1997) points out that precedent setting litigation over interscholastic activities have primarily been cases addressing the issue of a private student's right to participate in athletic programs rather than home schooling cases per se. As with those cases which address the issue of a private student's right to participate in sports programs, home schooling parents have asserted their child's constitutional right to equal protection of the law legally requires public schools to allow their child to participate in public school programs. Most courts that have addressed this issue have applied the rational basis analysis and have found on behalf of the public school district's eligibility requirements of full-time enrollment in the public schools.

Extracurricular Cases

One of the earliest cases involving the issue of extracurricular access was Thomas v. Allegany County Board of Education (1982). In Thomas three students who attended a parochial school in the state of Maryland and who were not allowed to participate in the

all county band program challenged the board of education's rule limiting participation to only those students enrolled in the public high schools of the district. In their suit, the students claimed that the district's action violated their First Amendment right to free exercise of religion and their Fourteenth Amendment rights to equal protection and freedom of educational choice (Klimesh, 1997).

In regard to the free exercise claim, the students argued that the limitation of participation to only those enrolled in public schools infringed upon their right to attend a religious school and thus their right to free exercise (Bjorklun, 1996). The court ruled that the board's decision to limit the band program to public school students did not interfere with the private school student's freedom of religion since it neither prohibited a parent from enrolling the student in private school nor deterred the student from following the practices of his or her faith (Klimesh, 1997). The court said: "The rule merely prevents a child from reaping the benefits of a public school activity once the constitutional right to a private school education is exercised" (Thomas, 443 A.2d at 625). The court also supported the notion that the board had a compelling state interest in support of the policy because it prevented administrative disruptions of the school. The court stated:

> Although the administrative impact of a decision mandating the participation of the private students into this public school program appears to us to be trivial, the precedent as it affects the broader spectrum of school administration is of a far more deleterious nature. With the opening of such "Pandora's box", there would be no device to preclude, for example, a private school having difficulty securing a qualified chemistry teacher from unilaterally deciding to transport the entire student body to a nearby public school for their chemistry education. The potential for administrative disruption is obvious. (Thomas, 443 A.2d at 625-26)

In regard to equal protection, the students claimed that private school students must be treated similarly to public school students with respect to participation in public school extracurricular activities. The Maryland court rejected this contention holding that

the compelling state interest in avoiding administrative disruption was also applicable to the equal protection claim (Thomas, 443 A.2d at 626).

The court also addressed the plaintiff's claim that the board's policy infringed upon their right to educational choice by excluding only those students who chose to attend a religiously affiliated school. The Thomas Court cited a decision by the New York Supreme Court that held that parents clearly have the right to send their children to nonpublic schools but there is no corresponding right to equal aid or even to any aid at all unless authorized specifically by legislation (Bjorklun, 1996). The court explained: "We agree with the rationale of the New York court that parents and children had a constitutional right to choose where they would receive their education, the choice has been exercised, and now they cannot be heard to complain" (Thomas, 443 A.2d at 627).

The Maryland court also addressed the plaintiff's claim that a state statute which provides that the public schools are open to all individuals who are at least 5 years old and under 21 gave them the right ". . . not merely to be admitted to the public schools of this state, but to any part or portion of the public school system which they choose" (Thomas, 443 A.2d at 627). The court rejected this claim, stating that ". . . appellant's argument must fail in view of the unreasonable burden such construction would place on the efficient administration of the public school system" (Thomas, 443 A.2d at 627).

Subsequent to Thomas, the Michigan Supreme Court addressed a similar issue in Snyder v. Charlotte Public School District (1984) and reached a somewhat different decision (Klimesh, 1997). In Snyder, a sixth grade student in full-time attendance at a private school wanted to enroll in the band course at the public school to receive instruction that was not available at the private school. She was denied enrollment because the board's policy did not authorize any shared time or dual enrollment courses and restricted enrollment in all classes to full-time public school students only. Snyder's parents filed suit claiming the board's policy violated their rights to free exercise of

religion under the First Amendment and equal protection under the Fourteenth Amendment. They also argued that the policy violated her statutory right to attend a public school in her district of residence (Bjorklun, 1996).

The trial court had ruled that the state's public school systems were not required to offer shared time programs and that the plaintiff's First and Fourteenth Amendment rights had not been violated. The court of appeals affirmed the trial court's decision; however, the supreme court reversed on a 4-3 vote (Bjorklun, 1996).

In basically ignoring the First and Fourteenth Amendment claims, the Michigan Supreme Court based its decision primarily on the statutory issue. The court held that the statute, which gives a resident of the district who is at least five years old the right to attend school in the district, is not conditioned upon full-time attendance. In relying on a history of similar sharing between public and private schools, the court based its ruling on a finding of no evidence that part-time attendance would disorganize and disrupt the maintenance of the school (Klimesh, 1997). Noting that other school districts in the state had offered shared time courses for many years without problems, the court stated that: "It would be just as easy, economical and convenient (if not more so) to open these classes to nonpublic school students as it would be to provide these classes to them if they became full-time public school students" (Snyder, 365 N.W.2d at 159). Additionally, the court said that nonessential elective courses such as band, art, domestic science, shop, advanced math and science classes need not be taught in nonpublic schools and are the courses that have traditionally been offered on a shared time basis. The court further ruled that ". . . once these types of courses are offered to public school students in the district they must also be offered to resident nonpublic school students" (Snyder, 365 N.W.2d at 159).

A closer look at the findings in Snyder warrant pointing out some key considerations for future cases involving the issue of access. First of all, this is the only

known case to have ruled favorably on the plaintiff's claim for access and it took overturning two lower court decisions and a 4-3 vote in the Michigan Supreme Court to get a favorable ruling. In addition, this case is unique in that a statute in Michigan already existed which required schools to allow "shared-time instruction" with private school students (McGarvey, 1998). Also, a key difference between the decision reached by the Snyder Court and the one reached by the Maryland Court of Appeals in Thomas is that the Snyder case involved access to a course offered as part of the school's curriculum, not an extracurricular activity as was the situation in Thomas. A final consideration to keep in mind is that Thomas and Snyder also involved parochial school students, not home schooled students. Some of the principles set forth by the courts in those cases, however, may have relevance for home schooling, especially in states that regard home schools as private schools (Bjorklun, 1996).

In another recent case involving a request for access to certain public school activities or classes by a home schooled student from Oklahoma, the parents of plaintiff Annie Swanson sought to have their daughter be able to participate in choir and take a math class from her local public school (Klimesh, 1997). During Annie's seventh grade year, she was allowed to enroll in the two one-hour courses; and prior to beginning the eighth grade, Annie was permitted to pre-enroll in various eighth grade courses. However the Guthrie District's new superintendent told Annie and her parents that they must request for part-time enrollment to the Guthrie School District Board of Education (Nielson, 1998). Upon receiving Annie's request to attend school on a part-time basis the Guthrie Board adopted a policy that only full-time students would be eligible to enroll in the Guthrie District public schools, stating that "in the event the State Department of Education advises us that part-time students can be counted for state aid purposes, the Board will reconsider this policy" (Swanson, 942 W.D.Okla. at 513).

The Guthrie Board heard the Swansons' request that Annie be allowed to attend public school on a part-time basis on two separate occasions, and the Board reaffirmed its full-time enrollment policy each time (Nielson, 1998). The Swansons challenged the board's denial and filed suit in the United States District Court for the Western District of Oklahoma, and made the following primary arguments: (a) the Guthrie Board's policy violated Annie's state right to a free public education; (b) the Guthrie Board's policy violated Annie's parents' right to control the education and upbringing of their child; and (c) the Board's policy violated the Swansons' right to freely exercise their religious beliefs (Swanson, 942 W.D.Okla. at 513-514).

As to the Swansons' first argument, the district court stated that while Oklahoma law did create a right to a free public education, it did not create a property right to a free part-time public education when an alternative, home school education, had been chosen (Nielson, 1998). Despite acknowledging that under Oklahoma law, home schooling is considered a legal educational option, the court stopped short of concluding that the parents had a constitutional right to use public schools to supplement their own choice to home school their child. The court stated: "Plaintiffs have failed to provide any evidence that defendants have deprived Annie of her right to a free public education. Annie has always been and continues to be entitled to a free public education" (Swanson, 942 W.D.Okl. at 515). The court also noted that the Guthrie District had merely set a requirement, consistent with its statutory powers to oversee the affairs of the public schools, that fulfilled its duty to maintain a complete public school education (Nielson, 1998).

In regard to the Swansons' second argument, the court found that a parent's right to control the education of a child is not absolute, but is limited by powers given to local and state authorities. In the Swansons' case, the Board heard Annie and her parents on three different occasions, which constituted due process. The district court determined

that the Guthrie Board's policy did not infringe on Annie's right to a free public education, and as a result the Swansons' claimed right to direct Annie's upbringing did not include individual control over public education (Nielson, 1998).

In addressing the Swansons' claim that the Board's policy violated their right to freely exercise religious beliefs, the district court stated that the Board's policy did not violate any cardinal principal of the Swansons' religious faith or compel Annie to do or not to do something contrary to her religious beliefs or compel Annie to avow or disavow any religious beliefs. The Swansons unsuccessfully argued that their religious beliefs made home schooling a necessity, but did not preclude some participation in public school (Nielson, 1998).

In January of 1998, the 10th Circuit Court of Appeals upheld the lower federal district decision stating that there is no federal parental right that would force a local school board to allow parents to dictate that their children will attend the school for only part of the school day (McGarvey, 1998). In review of this case it appears therefore, that so long as a school district can advance a rational basis for its policy requiring full-time enrollment of students in its schools as a requirement for participation in extracurricular activities, courts are not likely to require districts to allow access of home-schooled students on a part-time basis (Klimesh, 1997).

Interscholastic Activity Cases

According to McGarvey (1998), the second major category of access litigation is over the issue of interscholastic activities. These cases generally involve families who are suing the school district or the state association over access to activities involving more than one school, such as sports programs. Most public high schools within a state are usually members of their respective state athletic associations. These private, often non-profit, associations have by-laws which member schools must adhere to in order to participate in the league. Many of these by-laws forbid public schools from allowing

students not enrolled full-time at the school from participating on the school sports teams. Such rules effectively keep home schoolers out even if the school is not opposed to a home school student participating. As a result, several states have federal and state court rulings involving the request for access to high school interscholastic activities by parochial and home schooled students. Many of these cases, however, deal with racial discrimination, gender discrimination, or transfer rules, rather than the access issue itself. This study has identified and will review the findings of four of the most recent cases on the issue of requested access to interscholastic activities for either parochial school or home schooled students.

In the first of these cases, Bradstreet v. Sobol (1996), Charlotte Bradstreet, a 14-year-old home schooler, challenged a New York state board of education regulation that only students in regular attendance at school can participate in interscholastic sport. Bradstreet claimed the regulation violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Despite this claim, the school district successfully argued that the policy of allowing only students who actually attend school to participate furthered a number of legitimate state interests regarding education, including promoting loyalty and school spirit, maintaining academic standards for participation in interscholastic sport and avoiding the uncertainty that may occur if home schoolers do not attend classes on a regular basis, but are allowed to pick and choose among extracurricular activities (Wong & Hums, 1996).

In speaking to the due process claim, the court said that in order for a violation of due process to occur, an individual must be deprived of a property or liberty interest. The court held that the plaintiff's interest in participating in interscholastic sports is not a property right subject to due process, but rather merely an expectation (Bjorklun, 1996).

On the equal protection claim, the court applied the rational basis test. The court did not apply the strict scrutiny test, because Bradstreet could not demonstrate that any

one group was being singled out by this rule (home school students were not of any particular affected group, in other words) or that a fundamental right was being violated (Wong & Hums, 1996). The court said that ". . . absent a suspect classification or fundamental right claim, neither of which is advanced here, a regulation will withstand an equal protection challenge if it bears some rational relationship to a legitimate State purpose" (Bradstreet, 630 N.Y.S.2d at 487). In defending the rule, the Commissioner of Education claimed several state objectives: (a) requiring a student to be a member of the student body in order to participate in sports promotes loyalty and school spirit that leads to cohesion of the student body, provides a role model for other students, which cannot be accomplished if the student athlete has little contact with the general student population, and assists in maintaining academic standards for participation in sports; (b) since interschool athletics may be accepted for credit towards the physical education requirement, it has a quasi-curricular nature that cannot be extended to students not enrolled in a public school (Bjorklun, 1996); and (c) "havoc may be wreaked upon the public school system if home schoolers are permitted to opt out of the public school program generally and yet selectively participate in interschool athletics and then extend that ability to select courses of instruction as well" (Bradstreet, 630 N.Y.S.2d at 487). The court stated that these were sufficient reasons to establish that the rule furthers legitimate state interests and was thus not in violation of the Equal Protection Clause (Bjorklun, 1996). Finally, in dismissing the plaintiff's claim, the court concluded: "The possibility of being on a high school sports team is one of the privileges of attending school. The Court can discern no good reason why this privilege should be extended to persons who do not attend the school" (Bradstreet 630 N.Y.S.2d at 488).

In the same year but a different state, a 14-year old Pennsylvania home schooler Jeremy McNatt sought permission to play on the basketball team of the public junior high school in his district of residence, Frazier School District. The Pennsylvania

Interscholastic Athletic Association permitted member school districts to adopt and implement their own individual policies regarding home schooler participation, although most districts did not allow participation. The Frazier School District policy regarding student eligibility in extracurricular activities did not specifically address home schoolers' participation. However, after McNatt's request, the district school board took up the matter and decided not to allow it (Wong & Hums, 1996).

Upon the board's denial of permission, McNatt filed suit in federal court claiming the board's action violated his constitutional rights (Bjorklun, 1996). In addition, the McNatts stated that the district, school board and superintendent acted in an unreasonable, arbitrary and capricious manner in violation of Pennsylvania law. The plaintiffs also raised an equal-protection claim under the Fourteenth Amendment of the U.S. Constitution (Wong & Hums, 1996).

In an unpublished opinion, the court found in favor of the defendants, and Jeremy McNatt was not allowed to participate. The court's decision mentioned several points:

> 1. The district did not permit parochial students, privately tutored students, dropout students in an adult education program or private school students who live within the district to participate.
> 2. The Pennsylvania Interscholastic Athletic Association (PIAA) rules provide that a student is ineligible to participate in interscholastic sports if the student misses 20 days of school a semester. The student remains ineligible for 60 days after the last absence.
> 3. The district follows, in addition to the PIAA rule, a local rule that prescribes that if a student is absent or tardy on a given day, the student is ineligible to practice with the team or play in a game that day.
> 4. To play interscholastic sports, the student must maintain a C-minus average, which is issued every nine weeks, and must not be failing more than two core subjects. Additionally, during the season, the athlete's teacher must report to the principal the student's academic standing on a weekly basis. (Wong & Hum, 1996, pp. 10-11)

As a result of these points, the court found that the district's rule denying participation was rationally related to a legitimate purpose. In addition, the court upheld the board's action holding that access to extracurricular activities is not guaranteed by the

federal Constitution (Bjorklun, 1996). This decision was reinforced a year later in a New York appellate court ruling in which the higher court once again held that, "Participation in interscholastic sports is merely an expectation and no fundamental right is involved . . ." (Bradstreet, 650 N.Y.S.2d at 403).

In one of the more recent cases with some applicability to home schoolers, a private school student by the name of Tami Kaptien requested access to her Montana public school district's extracurricular activities (Nielson, 1998). In Kaptien v. Conrad School District (1997), the Montana Supreme Court denied privately enrolled student's request for permission to participate in the public school district's ("Conrad District") sports program. In so doing, the court attempted to balance under a middle-tier scrutiny, Tami Kaptien's right to participate in extracurricular activities against the Conrad District's statutory powers to oversee the affairs of public education.

During the 1994-95 school year, Tami Kaptien, a seventh grade student and Montana resident, participated in the Conrad District sports program. Tami had chosen to play basketball and volleyball, but mid-way through the volleyball season, Tami was forced to leave the team because she was not a full-time student of the Conrad District's public schools. The District's Board of Trustees had established a policy which allowed only students enrolled full-time in District public schools to participate in public school athletics. Tami was a full-time student at the private Conrad Christian school, which offered limited athletic competition opportunities, such as ski days and intramural basketball, but did not offer opportunities to compete in other sports, such as soccer and softball. Outside of school, Tami participated in soccer and softball programs in the Conrad area. Her desire to participate in the public school sports program was due not only to her desire to compete, but to develop friendships and camaraderie as well. Because of funding limitations, there were very few opportunities for Tami to participate

in competitive athletic programs at the Conrad Christian School (Kaptein, 931 P.2d at 1312).

Following the Board's refusal to allow Tami to participate in public school sports, Tami's parents filed suit on her behalf in order to compel the Conrad District to permit their daughter's participation. They filed suit in October of 1995 in Montana's Ninth Judicial District Court, Pondera County. Initially the lower court issued a preliminary injunction against the Conrad District authorizing Tami to play volleyball until the matter was resolved (Kaptein, 931 P.2d at 1312).

The Kapteins argued that the Montana Constitution guaranteed Tami the right to engage in extracurricular activities offered by the public school. They also argued for the use of a middle-tier analysis, balancing Tami's right to compete against the Conrad District's interests in requiring full-time enrollment in public schools as a prerequisite to participation in extracurricular activities. The Conrad District contended that even under a middle-tier analysis the Conrad District's educational interests outweighed Tami's interest in competing, because allowing students not enrolled full-time in public school to participate in extracurricular activities would threaten the school's interest in effectively integrating extracurricular and educational courses (Kaptein, 931 P.2d at 1312-1313).

Both Kaptein and the Conrad District moved for summary judgment. The District Court upheld the Conrad District's policy, granted summary judgment in favor of the public school district, and dissolved the preliminary injunction. The Kapteins then appealed the lower court's decision to the Supreme Court of Montana. At that time, the Kapteins also requested an injunction pending appeal (Kaptein, 931 P.2d at 1311, 1313).

The Montana Supreme Court denied the injunction pending appeal and upheld the lower court's decision, holding that Tami had no fundamental right to participate in extracurricular activities. The court applied a middle-tier analysis and concluded that Conrad District's interest in integrating essential and extracurricular programs to ensure

quality and efficiency outweighed Tami's interest in participating in school sports. The Montana Supreme Court also found that the Conrad District's interests would best be served by allowing only students enrolled in public schools to participate in extracurricular activities. The Conrad District envisioned an integrated "system" of extracurricular activities, academic courses and elective courses which all compliment each other. The court concluded that Tami's interest in participating in extracurricular activities clearly outweighed the Conrad District's interest in an effective integration by limiting participation to full-time students (Kaptein, 931 P.2d at 1313, 1316-1317).

As part of his concurring opinion, Justice Nelson brought out several points that are worth noting. First of all, this opinion reinforced the fact that the Montana Constitution makes the right to an education a fundamental right. A second persuasive argument made by Judge Nelson stated that allowing Tami, a student enrolled in a private sectarian school, to participate in public school extracurricular activities would violate the Montana constitutional prohibition against appropriating, directly or indirectly, public funds for any religious purpose. Finally, the concurrence reasoned that the Kapteins were attempting to use the judicial system to shift the burden of funding private school sports programs and other extracurricular activities onto the public school system (Kaptein, 931 P.2d at 1318-1319).

In Gallery v. West Virginia Secondary Schools Activities Commission (1998), a circuit court ruling provides one of the most recent rulings of a home schooler's request for access to the extracurricular realm of his local high school. Matthew Gallery, a ninth grade home school student living in Hampshire County, West Virginia sought access to the cross country team in Capen Bridge Junior High School. Capon Bridge was the public school which Gallery would have attended had he been enrolled in the public school system rather than home schooled. In October of 1995, school officials at Capon Bridge denied the Gallery's request citing that as a participating member of the West

Virginia Secondary Schools Activities Commission (WVSSAC), the school could not permit Gallery to participate in athletics due to a WVSSAC Rule §127-2-3.1 which states: "To be eligible for participation in interscholastic athletics a student must be enrolled in a member school honored before the eleventh instructional day of the semester in which he competes. Enrollment must be continuous after the student has officially enrolled in school" (Gallery, Hampshire County, No. 97-C-34 at 2).

In May of 1996, Gallery's parents petitioned the West Virginia Secondary Schools Activities Commission (WVSSAC) to permit Matthew to have the opportunity to participate in athletics at Capon Bridge. Both the WVSSAC's Executive Secretary and Board of Appeals denied the Gallery's request to participate in Capon Bridge's athletics program. The Gallerys also made an unsuccessful attempt to gain a rule change through both the WVSSAC and the West Virginia Legislature. Finally, in May of 1997 the Gallerys brought suit against the WVSSAC and were granted temporary injunctive relief that allowed Matthew to participate in cross country athletics in the fall of the same year until the Hampshire County Circuit Court rendered its ruling (Gallery, Hampshire County, No. 97-C-34 at 2).

The plaintiff presented three arguments for why the court should invalidate the West Virginia Secondary Schools Activities Commission's (WVSSAC) Rule § 27-2-3.1. First of all, the Gallerys claimed that the rule failed to inquire into the student's intent for being a home schooled student. Secondly, the plaintiff argued that the rule was substantively unreasonable and as a result in violation of the legislative charge given to the WVSSAC in West Virginia Code § 8-2-23 which gives the organization the authority to make "reasonable" rules and regulations. The final argument made was that WVSSAC's rule should be considered invalid because it violated Gallery's right to equal protection as guaranteed by the 14th Amendment to the United States Constitution and by

Article III, §17 of the West Virginia Constitution (Gallery, Hampshire County, No. 97-C-34 at 2-3).

In addressing each of the plaintiff's arguments, the Hampshire County Circuit Court found in favor of the defendants in dissolving Gallery's temporary injunction as well as dismissing the case. The court dismissed Gallery's claim that the West Virginia Secondary School Activities Commission (WVSSAC) was required to inquire into the plaintiff's reason for choosing home schooling over the public school system. Concerning the plaintiff's claim that the current rule was substantively reasonable, the court found quite the opposite and pointed to the WVSSAC rule as substantively reasonable because it encourages students to become better students by monitoring their academic progress as a condition of their participation (Gallery, Hampshire County, No. 97-C-34 at 10).

Finally, in response to the plaintiff's third argument the court did not find the WVSSAC rule to be in violation of the equal protection clause because it did not treat similarly situated classes differently. The court noted that Gallery was not a public school student. The plaintiff and his family presumably made a conscious choice to remove himself from the public school system and as a result this action removed the plaintiff from the class of public school children and placed him in the class of nonpublic school children. The court reasoned in order for equal protection analysis to apply, similarly situated classes must be treated differently. In this case, there are different classes and they can be treated differently as long as unjust discrimination does not take place. Further, the court stated that even if Gallery were a member of a similarly situated class, the rule is still valid under equal protection analysis because it is rationally related to a legitimate end of government: encouraging and demanding high academic standards from public school students before they can participate in nonacademic publicly supported activities (Gallery, Hampshire County, No. 97-C-34 at 10).

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Another recent legal opinion on the issue of home schooler's request for access to public school interscholastic activities was rendered by the Office of the Attorney General for the state of Kentucky. In issuing an opinion which does not carry the force of law, Assistant Attorney General Diane Shuler Fleming addressed the issue of whether a local school board could legally preclude all home schooled and out-of-district students from participation in a school sanctioned basketball league. Fleming noted that the basis for most home schooler's challenging laws which deny interscholastic access centers upon due process and equal protection violations (Fleming, 1996).

In reviewing a number of relevant cases on this issue Fleming reached several noteworthy conclusions. First of all, a protected property interest is created by existing rules which are based upon statutes or regulations that secure specific benefits and support claims of entitlement. The mere expectation of a benefit does not create a constitutionally protected property interest. A person's property interest can only be violated when such persons are possessed of a legitimate claim of entitlement. According to this opinion, the interest of home schooler's request for interscholastic access can at best be characterized as an expectation or hope of a benefit. Such hopes and expectations do not rise to the level of a protected property interest. As a result, in the absence of a protected property interest, a local school board may preclude home schooled and out-of-district children from participating in a school-sanctioned basketball league and any due process or equal protection claims are moot (Fleming, 1996).

Summary of Access Case Law

A review of the most recent case law on the issue of extracurricular access uncovered three cases dealing with the request for access to activities other than sports and four cases plus a Kentucky Attorney General's opinion dealing with the request for access to interscholastic athletic activities. Of the seven opinions rendered, Thomas, Snyder, and Kaptein dealt with a private school student's request for access to various

extracurricular activities. Swanson, Bradstreet, McNatt, Gallery, and Fleming's Legal Opinion were all cases involving a home schooler's request for access to varied interscholastic activities with the exception of Swanson, which involved the request for access to choir and math class. In every case, with the exception of Snyder where special circumstances were involved, the courts ruled in favor of the defendants involved whether they were the local school district or the state athletic association.

McGarvey (1998) correctly concluded that in virtually every access case the courts have rejected the plaintiff's constitutional claims to due process of law, equal protection under law, or free exercise of religion. Instead, the courts have favored the authority of the local school district or state athletic association when they denied access to private or home schooled students. As the research shows, most courts that have addressed this issue have applied the rational basis analysis and have generally enforced the public school district's eligibility requirements of full-time enrollment in the public schools (Klimesh, 1997).

In the case of Thomas, the court found that the defendants had satisfied the "compelling state interest test" in rejecting the plaintiff's 14th Amendment Equal Protection and 1st Amendment Free Exercise claims. Similarly, the courts that ruled on the Swanson case rejected the plaintiff's Free Exercise claim in siding with the local district's position of being able to provide a "rational basis" for its policy requiring full-time enrollment of its students (Klimesh, 1997). In rejecting home schooler Charlotte Bradstreet's request for interscholastic access, the court ruled that the plaintiff's due process claim had not been violated and that interscholastic sports were not a property or liberty interest, but rather "merely an expectation" (Bradstreet, N.Y.S.2d at 403). Additionally, the Bradstreet Court rejected the plaintiff's equal protection claim by applying the rational basis test. In McNatt v. Frazier School District (1995), an unpublished Pennsylvania court decision, the plaintiff's equal protection claims were

once again denied and the district's rule denying participation rationally related to a legitimate purpose (Bjorklun, 1996). Using "middle-tier" scrutiny, the Montana Supreme Court ruled in favor of the defendant in Kaptein v. Conrad School District (1997). The court concluded that Conrad District's interest outweighed Tami Kaptein's interest (Nielson, 1998). In the final and most recent court finding, a Hampshire County Circuit Court ruled in favor of the West Virginia Secondary School Activities Commission (WVSSAC) in their denial of access to a home schooler. The court found the WVSSAC rule denying access to be "substantively reasonable" and the plaintiff's equal protection claim not applicable due to their "conscious choice" to home school (Gallery, Hampshire County, No. 97-C-34 at 10). Fleming's 1996 legal opinion further reinforced the notion that a home schooler's request for interscholastic access can at best be characterized as an expectation or hope of benefit rather than a constitutionally protected property right.

The only known case to rule in favor of a non-public student requesting access is the somewhat unique finding in Snyder v. Charlotte Public School District (1983). In this particular case the trial court had ruled that the state's public school systems were not required to offer shared time programs, but the Michigan Supreme Court reversed this decision (Klimesh, 1997). Michigan's High Court ruled that a private school student could take an extracurricular class in the public school as long as the private school attended did not offer that class and the class was not a core subject. However, this case was unique in that a statute in Michigan already existed which required schools to allow "shared-time instruction" with private school students (McGarvey, 1998).

Regulatory Diversity of State Athletic Associations

National Federation of State High School Association's Position Defined

The National Federation of State High School Associations (NFHS) has the responsibility of regulating its 50 member state athletic associations on a wide variety of issues related to interscholastic activities. However, on the issue of home schooler's

request for access to public school interscholastic activities the NFHS and its executive director Robert Kanaby have been unwilling to take a position on the subject. In an interview with Lafee (1998), Kanaby recognized that this "is a growing issue," but for the time being has preferred to let each state athletic association deal with the topic as it sees fit (p. 19). As a result, it should not come as a shock to anyone that currently no consensus exists on how to handle this particular issue.

Types of Existing State Athletic Association Regulation

Several methods were employed to acquire the present position of each of the 50 state high school association's policy or by-law position on the issue of home schooler's request for access to interscholastic activities. These methods included a 1995 Kentucky High School Athletic Association's current issues survey that was shared with the National Federation of State High School Association (NFHS), the NFHS web site (http://nfhs.org/states.hlm) and various hyperlinks to many of the state associations that had their current by-laws on-line, and direct phone calls to many of the state associations requesting a faxed or mailed copy of their present by-law dealing with this issue. This resulted in what can be generally held as a complete and thorough summary of the present status of the home schooler access issue among the 50 state high school associations (See Appendices C & D).

An analysis of this research produced several general observations. First, at the time of this project there were 28 state high school associations known to deny home schoolers the right to access interscholastic activities and 22 state high school associations that allow access to interscholastic activities in their respective public schools. Second, of the 28 state high school associations which deny access, they could generally be grouped into one of four sub-categories of denial. These sub-categories included 15 states with by-law wording calling for all students to be "legally enrolled" in the school for which they wish to participate, eight states which have by-law wording

requiring any participating student to be a "bona fide student" of the member district for which they wish to participate, four states which have an "implied prohibition" of home schoolers in their by-law wording, and one state with a "direct denial" of home schooler access. A final observation made of the 22 states that allow home schooler's access is that in each of these states the student must meet the same eligibility requirements as a public school student and these requirements vary from state to state.

"Legally Enrolled" States

Presently there are 15 state high school associations which have by-laws with wording that requires all students to be "legally enrolled" in the school for which they are participating. As a result of such wording, home schoolers are effectively denied access to any public school interscholastic activities. This list of states includes: Alabama, Delaware, Indiana, Kentucky, Maryland, Michigan, Montana, New Jersey, North Carolina, South Carolina, South Dakota, Tennessee, Texas, West Virginia and Wisconsin. Typical of the by-law wording for states in this category would be the Delaware Secondary School Athletic Association's by-law on student eligibility which states that "A student must be legally enrolled in the high school which he/she represents and must be in regular attendance by September 20" (DSSAA Handbook, Sec. 2, p. 23). The New Jersey State Interscholastic Athletic Association took their by-law wording a step further by providing an interpretive clarification of their requirement that a student must be enrolled in a member school. This clarification stated that "students being home-schooled (by parents or other parties) are not eligible because they are not enrolled" (NJSIAA Handbook, Art. IV, p. 34).

"Bona fide Student" States

The second largest category of the state high school associations that deny interscholastic access are those with by-law eligibility wording that calls for all eligible participants to be "bona fide" students. Again, as a result of this type of wording, home

schoolers have been judged to be ineligible to participate in public school interscholastic activities. The eight states with eligibility wording requiring a student be "bona fide" are: Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Mexico, New York and Virginia. All eight states have very similar eligibility wording with the Virginia High School League's wording being very typical of the other seven "bona fide student" states. As part of the Virginia High School League's Bona Fide Student Rule (28-1-1,) "The student shall be a regular bona-fide student in good standing of the school which he/she represents" (VHSL Handbook, 28-1-1, p. 55). Similarly, yet clearly more direct is Article 1, Section 1.3.2 of the Louisiana High School Athletic Association's by-laws, which reads "A student in a home school program . . . shall not be considered a bona fide student of a school unless he/she is enrolled in the school and his/her grades are transferred and recorded on the student's official school transcript" (p. B-1).

"Implied Prohibition" States

The third category of access denial involves four states which presently deny due to by-law wording which "implies prohibition" of access. In other words, there is no strictly worded prohibition of home schoolers, however, their prohibition is implied as a result of the current interpretation of existing eligibility by-laws. These "implied prohibition" states include: Connecticut, Nevada, Ohio and Oklahoma. In Article IX, Section II entitled "Pupil Eligibility" of The Connecticut Interscholastic Athletic Conference By-laws it reads, "The pupil must have been in membership at a secondary school for at least twelve (12) school weeks immediately preceding the time of participation, or regularly admitted from an elementary, middle, or junior high school within ten (10) school days from the opening of the succeeding school term" (p. 3). In slightly different "implied prohibition" wording, the Ohio High School Athletic Association requires a player to "have been in attendance for at least 85 percent of the previous semester at an approved high school" (OHSAA 1997-98 Athletic Eligibility

Information Bulletin, p. 3). Each of these examples does not have by-law wording that specifically prohibits home schoolers from participating, however, their present wording has been interpreted to mean that home schoolers do not meet current eligibility criteria.

"Direct Denial" State(s)

The fourth and final category of access denial includes the one state high school association bold enough to print a direct denial of home schooler participation in interscholastic activities. The Hawaii High School Athletic Association serves as the lone example of a "direct denial" state. In Section 2 Eligibility Requirements of the Administrative Regulations of the Hawaii High School Athletic Association it states, "Students exempted from compulsory education (e.g. work, homeschooling) shall not be eligible for HHSAA activities." This is the boldest example of strict prohibition of access for home schoolers by any state high school athletic association across the country.

States That Allow Access

Among the 22 state high school athletic associations that allow interscholastic access for home schoolers, there are some generally held guidelines. First, the student must be compliant with the state's home school law. Second, home schooled students must meet the same eligibility requirements as public school students. Finally, each state requires that home schooled students be able to verify he or she is passing his or her core subjects. As a result, home schooled students may be required to provide achievement test scores or periodic academic reports, even if the state's home school statute does not otherwise require them (McGarvey, 1998).

Presently, there are some states that make it easier for home schoolers to obtain services. Montana, New Hampshire, and Virginia allow schools to receive partial funding for students to whom they provide services. Massachusetts and Wyoming high school athletic associations have passed by-laws which allow home schoolers to play on public school sports teams. In addition, according to McGarvey (1998) the following 15

states have considered equal access bills in their state legislatures: Kansas, Louisiana, Mississippi, Montana, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Virginia and West Virginia.

Illinois' Position Redefined

As one of 22 states which allow access, Illinois serves as an example of a state where the decision itself has been left solely upon each local board of education whether to allow access to a nonpublic school student to any or all of the public school's activities. Section 10-20 24 of the Illinois School Code requires the Board of Education of every school district to accept nonpublic school students in part-time attendance in the regular education program, provided the following four conditions are satisfied:

> 1. The student seeking to attend part-time is enrolled in a nonpublic school;
> 2. There is sufficient space in the school in which the student desires to enroll;
> 3. The nonpublic school Principal submits the request for part-time attendance in a given school year to the public school before May 1 of the preceding year; and,
> 4. The request is submitted to a public school located in the district in which the requesting student resides. (Barbre & Turner, 1996, p. 3)

Many legal experts, like Canna (1997), hold the opinion that because the courts have concluded that a home school constitutes a private school for purposes of Compulsory Attendance Law, then home schooling would fall within the coverage of Section 10-20.24 as well. Thus, a student who is being educated at home must be permitted to enroll in the District's regular education program on a part-time basis, provided the applicable space, notification and residency requirements are met. However, it is generally held that Section 10-20.24 does not necessarily require that a student who is being educated at home full or part-time be allowed to participate in the district's extracurricular activities as well (Barbre & Turner, 1996; Canna, 1997).

In Illinois, as well as other states across the nation, the courts have generally held that there is a distinct difference between a student's right to attend school and a student's privilege to participate in extracurricular activities. This legal precedent is viewed by most experts as relatively long standing, despite those who have argued otherwise. The "whole child" concept is used by many access advocates to point out that participation in extracurricular and school activities is important to a child's development as a beneficial supplement to academic involvement (Paisley, 1994). Because the issue of extracurricular access has been determined to be a local school board decision in Illinois, there is considerable disparity on this issue found across the entire state. Some athletic conferences prohibit home schooler participation, while some schools allow participation in athletics but prohibit other extracurricular participation. On this issue there is no clear body of court rulings and no district wants to serve as the Supreme Court's landmark case (Barbre & Turner, 1996).

The Illinois High School Association's Position

In Illinois, local school districts may refuse or allow home schoolers, whether enrolled part-time or not, to participate in extracurricular activities. Allowing participation by such a student may result in a full-time public school student being "cut" from the activity. Whether to allow participation, and if so, any limitations on that participation, is solely a local policy decision (Policy Reference Education Subscription Service, Illinois Association of School Boards, 1997).

The Illinois High School Association (IHSA) bases its ruling on By-Law 3.025, which states: "Work taken in junior college, college, university, or by correspondence may be accepted toward meeting the requirements (toward academic eligibility), provided it is granted credit toward graduation from high school by the local Board of Education." As a result of this particular by-law, each local Board of Education must judge whether or not it can accept work offered through instruction outside its normal curriculum.

Historically these decisions have been with respect to summer school work and correspondence courses, but now home school classes are part of the list. As a general practice, the Illinois High School Association (IHSA) will grant interscholastic eligibility to home school students upon their having met the following conditions:

> 1. The home school work must be accepted by their local school district Board of Education and granted credit toward graduation by the local high school;
> 2. The local high school establishes a method of monitoring the home school student's weekly academic performance in order to certify that the student is passing a minimum of 20 credit hours of high school work per week and is meeting minimum academic eligibility standards for participation (Barbre & Turner, p. 4).

Despite the permissive nature of the IHSA's ruling on the issue of access, local districts are fully within their legal right to deny home schooler's access to privileged extracurricular activities, as well as allow access. Illinois clearly leaves this decision to each of the 890 local school boards across the state. As a result, there remains little uniformity or direction provided by either the State Board of Education or the IHSA on this issue, for which it can be argued there is a need for direction.

CHAPTER IV

ANALYSIS OF POLITICAL AND ETHICAL CONSIDERATIONS OF THE ACCESS ISSUE

Pro-Access Arguments

One of the strongest arguments raised by pro-access advocates is that home school families are members of the community and pay taxes the same as families who send their children to public schools. Their taxes help fund public schools, too, whether home schoolers elect to use them or not. It is discriminatory and illegal to exclude home educated students from other public institutions such as libraries, hospitals or parks. Likewise, it should be unacceptable to keep them out of public education programs (McGarvey, 1998). This argument and attitude was recently exemplified in the following statement made by a spokesperson for the South Carolina Association of Independent Home Schools: "We just feel this is a taxpayer equity issue. We pay for these programs and our children ought to be able to benefit from them" (Henry, 1996, p. 2D). Additionally, when public schools have denied interscholastic access to home schoolers, they have often faced the threat of litigation and political posturing. For example, a recent advocate stated, "Educators should be doing everything they can to help their tax-voting base stay connected with the school system" (Natale, 1996, p. 17). A similar attitude was expressed by a South Carolina state representative who recently initiated pro-access legislation on behalf of home school students. He stated that "As taxpayers, we all should have access to the public schools," but the education establishment "is arrogant and proprietary" (Diegmueller, 1995, p. 13).

A second argument raised by advocates of home schoolers seeking access to public school extracurricular activities is that public schools which deny access are in fact denying the constitutionally protected rights of this particular group of students. They reason that home schoolers who are gifted in athletic and/or other special areas have the right to enhance their talents through controlled interaction with public school interscholastic competitions (McFarland, 1997). In fact, as has been previously noted, a number of home schooling families have claimed through litigation that their constitutional rights have been violated as part of the public school's denial of access to the part-time home schooler.

Several constitutional claims have been advanced on behalf of home schoolers seeking access to their local public school on a part-time basis. One argument made is that denying home schoolers access to part-time classes denies them due process (5th and 14th Amendments) to their property interest in the free public education provided for by state constitutions. A second claim often made is that home schoolers excluded from part-time activities are unjustifiably discriminated against, denying these students their right to equal protection under the law (14th Amendment). A third and final constitutional argument raised is that many home schoolers are not enrolled in public school because of a sincere religious belief and as a result their right to the free exercise of their religious beliefs has been burdened by the denial of access to public school activities (1st and 14th Amendments). In virtually every litigated case the courts have rejected these various constitutional claims. In addition, the courts have ruled that school districts are fully within their legal right to set eligibility requirements for extracurricular school activities as well as requiring full-time student enrollment (McGarvey, 1998).

A third and final area of argument raised by access advocates is that a student is a student whether he attends public school, is home schooled, or attends a Christian school. Specific economic and career advantages are available to public school students

(McGarvey, 1998). For example, with the increased opportunity for college scholarships available through sports and other activities in public schools, home schoolers should be given the opportunity to obtain these scholarships as well. In addition, home schoolers who are gifted in athletic or other special areas, need to be able to enhance their talents through the controlled interaction with public school interscholastic activities (McFarland, 1997). Access advocates firmly believe that home schoolers are entitled to public school activities on a part-time basis and that access denial should be ruled arbitrary and ultimately an act of discrimination. Using a variety of reasoning, the courts have almost universally rejected arguments that claim a public school's policy of denying access to a part-time student is discriminatory. A recent legal opinion written by Lukasik (1997) supports this notion. She states that "if the public school has a policy permitting students to attend class on a part-time basis, then the public school must provide that privilege to all students (whether home-schooled or not) assigned to that school. However, if a particular public school does not permit part-time attendance as a general policy matter, then part-time attendance is not one of the 'privileges and advantages' of that public school, and none of the students in that administrative unit (whether home-schooled or not) may . . . demand such a privilege" (p. 20).

Anti-Access Arguments

It should be noted that for each pro-access argument raised on behalf of home schoolers, there is an equally strong anti-access argument. The focus of this section will be upon the three arguments most often cited by those expressing an anti-access position. A particularly persuasive argument made on behalf of a policy denying public school access to part-time students is a refutation of the pro-access position that paying taxes entitles all students access rights to a variety of public school programs. Despite this notion, paying taxes which support a government program does not automatically give someone the right to participate in that program. Adults who do not have children but

own property, pay the same taxes as property owners who do have children (McGarvey, 1998).

A second and equally persuasive argument involves the issues of choice and fairness. Many of the access cases that have been litigated and the state athletic associations that have instituted policies denying access to home schoolers, have used the argument that there are consequences of making choices. For example, in Thomas v. Allegany (1982), a Maryland Court of Special Appeals reasoned that once a student chooses to forego his or her right to attend public school by enrolling in an alternative system of education no complaint can thereafter be made that his or her right to attend public school has been violated. The court further reasoned that making a choice to enroll in an alternative system of education waived any equal protection claim that a student was being denied access to the education system (Nielson, 1998). A decision rendered by the New York Supreme Court also supports the notion that there are consequences for deciding to forego a public school education for your child. The court stated: "We agree with the rationale of the New York court that parents and children had a constitutional right to choose where they would receive their education, the choice has been exercised, and now they cannot be heard to complain" (Bjorklun, 1996, pp. 549-550). Lukasik (1996) further reinforces the idea of there being consequences for making a choice when she wrote "parents cannot logically rely on the First Amendment both to constitutionalize their right to keep their children out of public schools and compel public schools to allow their children into the public schools on their own terms" (p. 1964).

Two recent statements issued by representatives of the state athletic associations in New York and Virginia demonstrate a similar sentiment regarding parental choice. "This is an issue of choice," says Lloyd L. Mott assistant director of the New York State Public High School Athletic Association.

> Parents make choices. And with these choices come consequences. If I decide to send my child to a private school or keep them home to teach, then I must accept the results of that action. I may have to pay tuition. My child probably won't have the benefit of playing on the school team. Parents and children have to weigh these pros and cons, make their choice and live with it. (LaFee, 1998, p. 22)

The executive director of the Virginia High School League expressed a similar sentiment when he said "If you don't attend that school, why should you be allowed to represent the school in competitive activities? You have no ties" (McFarland, 1997, p. 23).

Often coupled with the issue of choice is the issue of fairness surrounding the access debate. Mary Jo Kramer, a Connecticut public school superintendent, expresses the sentiment of a majority of public school administrators when she said, "Our policy precludes home-schoolers from participating in any kind of extracurricular activity. Why should they be entitled to these benefits without the price of membership, particularly if we're talking about possibly displacing a student who has followed the rules, who has met the standards? Why should that child lose a place on a sports team to someone unwilling to be part of the whole organization" (LaFee, 1998, p. 22)? A public school parent in the state of Massachusetts recently expressed a similar attitude during a series of school meetings on this very same issue. The comment expressed was "It's not fair for them (home schoolers) to want the best of what the public school has to offer without paying the dues" (McFarland, 1997. p. 23).

The South Carolina High School League recently expressed its opposition to allowing home schoolers access by focusing on the issue of fairness as it applied to the question of eligibility and giving everyone the some shot at a team. According to the league's executive director, a state statute requires public school students to pass a minimum of four subjects to participate in athletic activities; if they fail one, they can't play. Home schooled children on the other hand, would not currently be held to such standards. Access advocates have proposed that home schoolers' participation be tied to

performance on a standardized test. However, this does not amount to an equitable situation either, because home schoolers would still not be required to pass additional coursework that is required of a public school student. Advocates counter with the argument that parents should be able to vouch for how well the student is doing in academic coursework at home. Most public school administrators remain skeptical at best with this type of argument and most would concur with the sentiment of the executive director or the South Carolina High School League who posed the hypothetical question: "Does anyone ever fail with a parent" (Natale, 1996, p. 17)?

The final issue raised by those arguing the anti-access position is the potential chaos created and administrative nightmare associated with trying to police various school rules, as well as eligibility requirements. In Virginia, where the decision to allow home schoolers access to public school activities is left to the local school board, an Arlington public school board member points out, "We get no county or state money for kids who aren't enrolled . . . We are not a cafeteria. It gets complicated when a family says we don't choose Arlington (public schools), but we want this piece and this piece and this piece" (McFarland, 1997, p. 23). A similar sentiment was expressed by a high school athletic director in Easton, Pennsylvania in opposing a home schooler's request for access. He said:

> What really concerns me is that the door is now open for home schoolers to opt into any public school program without having to do what every other student has to. What happens when someone says they want to join a computer lab or take an advanced course or sing in the choral group without actually attending any other classes? It will cause chaos. How do we keep records, maintain class sizes or project future budgets when we don't know who might be here. (LaFee, 1998, p. 22).

Other critics of the trend point out that public schools are too short on staff and resources to get into the business of cafeteria-style schooling. And many ask, Why should we? If

home schoolers have opted out of the public schools, they should stay out rather than expect customized semi-public programs (Natale, 1996).

In addition, the courts have generally supported the defendant's argument that being forced to allow part-time access to public school activities would create an unnecessary administrative burden for public schools. One of the primary reasons given for ruling in favor of the defendant in Kaptien v. Conrad School District (1997) was to prevent unnecessary administrative burdens on the public school system that would have resulted from permitting non-enrolled students to participate in public school extracurricular activities. In Montana, students participating in sports programs must show regular school attendance, attendance on the day of a sporting event, satisfactory academic progress as determined by a weekly review by district personnel, good conduct while in school, and compliance with training rules. Non-enrolled students would also be expected to comply with these standards of conduct in order to be eligible to participate in extracurricular activities. The mechanism for ensuring that non-enrolled and enrolled students comply with previously cited standards for conduct and academic performance would fall squarely on the shoulders of the public school system (Nielson, 1998). Similarly, in Thomas v. Allegany County Board of Education, (1982), the court supported the district's denial of non-enrolled students in extracurricular activities because of the obvious "administrative disruption" such a practice would create. The court stated further that being forced to implement a policy which allows access for non-enrolled students "must fail in view of the unreasonable burden such construction would place on the efficient administration of the public school system" (Klimesh, 1997, p. 3- 12).

The potential "administrative nightmare" of allowing home schooler part-time access is not lost on others who have recently offered their opinion on this issue. The executive director of the Idaho Association of School Administrators recently raised

several hypothetical questions that remain to be answered for many public school administrators.

> What happens, for example, to a student who transfers from one public school to another after the beginning of the year and finds the chemistry labs full? If a home-school student were enrolled in one of the labs, would he be booted out to accommodate the transfer student? Or could a student who was going to lose his academic eligibility to play sports switch to home schooling so he could play? (Diegmueller, 1995, p. 16)

By allowing access to part-time students, public school students who might be unhappy in a particular aspect of their coursework could drop out of school, claiming home school status, and still take part in some aspect of public school they enjoy, such as playing on the football team (Natale, 1996). Lukasik (1996) writes:

> If a student did not like her math teacher, the family could decide to use the public schools part-time for all classes except math, teaching the child at home during math period. Under these circumstances, no state interest in education is served by permitting part-time enrollment because the children are not satisfying educational goals through their educational choice; however, the financial and administrative burdens inherent in a part-time enrollment structure would still threaten the school. (p. 1969)

The State of Michigan: An Example for Illinois

The issue of extracurricular access has recently caused the Michigan High School Athletic Association (MHSAA) to take a very aggressive stance opposing legislation which would require public schools to allow athletic participation by students of charter schools, home schools and other non-public schools in the public school district. State Senator Mike Rogers, who also helped found a charter school in the state, recently proposed this bill (SB718) in the Michigan State Senate. The bill, viewed by those who oppose it as somewhat self-serving, would require the Michigan High School Athletic Association to allow access or face extinction due to a stipulation in the legislation that would prohibit schools from joining an association that denies access to students of charter schools, home schools, and other non-public schools (Gross, 1995).

In taking a very offensive position in opposition to this proposed legislation, MHSAA executive director Jack Roberts helped turn back the pro-access bill with a set anti-access arguments similar to those that have been previously summarized in this chapter. The first concern registered by Roberts was that the legislation provided no net gain in participation opportunities and unenrolled students would be allowed to displace enrolled students for a limited number of playing positions on public school teams. A second concern registered was that the legislation provided a disincentive for non-public and charter schools to maintain existing teams or create new teams. The third area of concern rested with the management nightmare created. As Roberts pointed out, school calendars differ for vacations, exams and grading periods; school requirements and penalties differ for attendance, academic eligibility and codes of conduct. A fourth area of concern involved the myriad of contradictions and omissions created by a poorly written athletic transfer rule in the bill. Recruiting abuses could be expected to increase. The fifth area of concern was the lack of academic accountability for a home schooled student's academic progress and the loss of academic integrity of educational athletics that would result. A final concern rested with the notion that parents of enrolled students will be outraged when their children lose participation opportunities to unenrolled children who spend no time in that school's classroom and remain unaccountable to that school's administration and board of education (Roberts, 1995).

Despite the MHSAA's successful lobby against the 1995 pro-access bill, recent developments in the state of Michigan give every indication that the state's athletic association may have to go on the offensive once again. Michigan's governor has gone on record as supporting the idea that students who attend non-traditional schools should have access to extracurricular activities in their public school district. A spokesman for the governor recently pointed out that no legislation has currently been drafted, but that the idea is to make it a state law that would take effect next year. Clearly the issue of

access in the state of Michigan is one that will continue to be an emotional political issue for all parties involved.

A Pro-Active Opportunity for Illinois

Despite the state of Illinois' apparent unwillingness to regulate home schooling, there is mounting evidence in states like Michigan, that the Illinois legislature will be faced with the issue of extracurricular access for home schoolers in the very near future. As a result, it would make logical sense for the state's General Assembly to take a pro-active approach to the issue of access for home schoolers by drafting legislation that would provide direction for the state on this particular issue for years to come. Taking this type of position would allow Illinois to provide local districts with definitive direction on the issue of access and keep the state from having to react defensively to poorly constructed access bills that are sure to be proposed in the near future.

Two organizations that should take an active role in helping draft an anti-access bill in the Illinois State Legislature are the Illinois High School Association (IHSA) and the Illinois Elementary School Association (IESA). Each of these organizations would have a vested interest in creating a law that would help them to do their jobs most effectively. Due to the present lack of continuity across the state on the issue of extracurricular access for home schoolers and based on anti-access arguments similar to those raised in this study and most recently by the Michigan High School Athletic Association, this study recommends drafting legislation that would deny extracurricular access for home schooled students.

A second group that should play a role in drafting legislation that would deny access are the professional administrative organizations representing the public school administrator's point of view on this issue. The Illinois Principal's Association (IPA) and the Illinois Association of School Administrators (IASA) would most certainly bring out very specific administrative burdens created by allowing home schoolers access to public

school extracurricular activities. Issues like overseeing the athletic eligibility of home schoolers, policing applicable transfer and recruitment rules, and having to create separate policy and rules for the part-time home school student are enough reason for the IPA and IASA to take an active role in drafting carefully worded legislation denying extracurricular access for home schoolers in the state.

A third and final group that would want to be a part of the process of drafting anti-access legislation, are many of the local school districts that presently are left to fend for themselves in formulating policy on this issue. Currently in Illinois, the decision of whether to allow home schooled children access to public school extracurricular activities is left to the policy of the individual local school district. As a result, policies vary widely across the state. According to a recent state survey conducted by the Illinois Association of School Boards (IASB) there are at least 112 of the state's 890 districts that allow home schooled or non-public school students to join public school teams (Banchero, 1999). At the other end of the spectrum are those districts that have instituted policies that deny access altogether and many as yet unaffected districts who have chosen not to address the issue through policy. The perceived inefficiency of such a wide array of policy, not to mention the unfairness of allowing access in one district yet denying it in another, should be reason enough to create a uniform position on the issue of access for the entire state. It is believed enough local boards of education would find it unfair as well as extremely distasteful to allow a local home schooler to displace a full-time public school student on the home-town team, that they, therefore, would be willing to provide meaningful input into the drafting of legislation that would uniformly deny extracurricular access to any part-time student in their respective districts.

CHAPTER V

SUMMARY, FINDINGS, CONCERNS, AND POLICY RECOMMENDATIONS

Summary

Clearly home education played a major role in the way children were educated in our nation's earliest history. However, it is equally evident that following the Common School Movement of the mid-nineteenth century there was less thought given to formally home educating children until recent times. Most would agree that the momentum for the modern home schooling movement has occurred during the last two decades. Conservative estimates place the number of children being home schooled at roughly half a million students, while advocacy researchers place the estimate closer to 1.23 million American children. Despite this disparity, there can be no denying the recent growth of this alternative form of education and the development of many related legal issues. Among these legal issues, not the least of which has served as the primary focus of this study, is the issue of access and whether home schoolers have the right to expect to be able to access certain public school activities while still home schooling their child a majority of the day.

Most legal experts support the notion that parents have the legal right to home school their children, despite no Supreme Court rulings specifically dealing with home schooling, a limited amount of supportive case law, and a limited number of states' statutes recognizing home schools. In general, the Constitution gives the state primary responsibility for ensuring a well-educated citizenry. With this authority came the adoption of compulsory attendance laws eventually present in all fifty states today. Typically, these laws require public or approved non-public school attendance for

children ranging from ages five to sixteen. Parental failure to comply with these laws has resulted in criminal prosecutions as well as penalties, usually in the form of misdemeanor convictions carrying relatively small legal consequences. The very nature of these laws has brought into focus the conflict between the right of a parent to determine the direction of their child's education and the right of the state to protect the common good of society as a whole. Although it has not ruled specifically for or against compulsory education laws, the Supreme Court opened the door to the legal legitimacy of home education with its decision in Yoder v. Wisconsin (1972).

The legal status of home schooling in Illinois comes from its qualifications as a private school through the interpretation of the courts. People v. Levinson (1950) and Scoma v. Chicago (1974) are generally recognized as defining the legal standing for home schooling in the state. Illinois remains one of 13 states in which home schools may operate as private or church schools. In addition, private schools are virtually unregulated in Illinois and as a result home schools are as well. It is widely recognized that Illinois is one of only four states that leave home schoolers virtually unregulated.

With the growth of home schooling and existence of significant disparity in the individual state regulation of home schools comes certain secondary legal issues somewhat related to the larger issue of the legal status of home schooling. One of these secondary legal issues became the focal point for this study. This was the issue of home schoolers requesting access to extracurricular activities in the public schools. While the literature review for this study revealed a large number of recent pieces of general research on home schooling, there were only three legal writings that dealt specifically with the issue of access and no dissertations. This supports the belief that this study will serve the purpose of stimulating further research of a relatively new and uncharted issue.

The Findings on Access

One of the primary purposes of this study was to provide a 50 state legal and regulatory framework on the issue of home schooler's request for extracurricular access. This framework coupled with key political and ethical considerations would then serve as the basis for making informed policy recommendations on behalf of the state of Illinois. According to recent legal research completed on the issue of access, ten states presently require public schools to allow home schoolers access to classes or extracurricular activities part-time by way of statute (See Appendix B). In addition to the ten states which have created access by means of statute, there are 12 states known to provide access through the rules and regulations of their respective high school associations. At the time of this study, there were 28 state high school athletic associations known to deny home schoolers the right to access interscholastic activities (See Appendices C & D).

For purposes of categorizing the 28 states who deny home schooler access, four sub-categories were created. The first of these four categories included 15 states with specific by-law wording calling on all students to be "legally enrolled" in the school for which they wish to participate. A second sub-category included eight states with by-law wording requiring all participating students to be a "bona fide student" of their respective member school district. The third sub-category of states included four states with by-laws that contained wording that "implies prohibition" of access for home schoolers. The final sub-category contained only one state which had created a by-law calling for the "direct denial" of home schooler access. Much of this considerable lack of continuity on the issue of access is directly attributable to the unwillingness of the National Federation of State High School Associations (NFHS) to take a definitive position on this issue. This has allowed NFHS to avoid costly litigation on this issue and as a result either individual high school athletic associations or local districts have been the targets of access litigation.

A thorough review of access case law revealed several interesting findings. First, given the relative newness of this issue it was not surprising to find a limited number of litigated cases involving access. Three cases, Thomas, Snyder, and Kaptein dealt with a private school student's request for access to various extracurricular activities. Four cases, Swanson, Bradstreet, McNatt, and Gallery, as well as Fleming's Legal Opinion all involved a home schooler's request for access to varied interscholastic activities. A second finding worth noting is that in every case, with the exception of Snyder where special circumstances were found, the courts ruled in favor of the defendants involved, whether they were the local district or the state athletic association. A third conclusion reached from a review of these cases was that in virtually every case the courts have rejected the plaintiff's constitutional claims to due process of law, equal protection under law, or free exercise of religion.

The state of Illinois is generally viewed as one of the few states in which home schooling is virtually unregulated. As a result it should come as no surprise that Illinois is one of 22 states which allow home schoolers access to extracurricular activities. It has become increasingly clear that the Illinois General Assembly, State Board of Education and Illinois High School Association remain unwilling to confront this issue with any definitive authority. As a result, the decision of whether to allow access has been handed down to each of the 890 local boards of education across the state. While this nondescript position taken by various state authorities is clearly the safest for them legally, it may prove to not be the most prudent. Local districts are left to use valuable time and money to solicit various legal opinions to help formulate policy that is both legally sound and community supported. Most legal experts are in agreement that Section10-20.24 of the Illinois School Code places considerable legal pressure on local school districts to allow home schoolers part-time access to the district's regular education program if certain conditions are met. However, there is considerable

variability in opinion as well as policy on whether a home schooled student should be allowed to participate in the district's extracurricular activities.

The Illinois High School Association (IHSA) is responsible for overseeing the interscholastic eligibility of its member schools' student participants. Currently the IHSA will grant interscholastic eligibility to home schooled students as long as their work is being granted credit toward graduation by the local high school and they are passing a minimum of 20 credit hours of high school work per week. Despite the permissiveness of the IHSA's access policy, many local school districts refuse to establish a policy allowing extracurricular access for home schoolers given the additional administrative burden created and out of a sense of fairness to their full-time students. In Illinois, as well as the rest of the nation, there is a long standing legal precedent of the courts recognizing a distinct difference between a student's right to attend school and a student's privilege to participate in extracurricular activities. Since home schooler access to extracurricular activities is a local school board decision, it would seem that any district would be on solid legal ground creating a policy that denies home schoolers access to extracurricular activities as long as this policy is not judged arbitrary or capricious.

Concerns

The results of this study have shown that compelling arguments can be made on both sides of the issue of whether home schoolers should or should not be allowed access to public school activities. However, the evidence points to a stronger case being made on behalf of adopting a state statute or IHSA policy which would deny home schoolers access to extracurricular activities. Given the court's support of various policies denying access and this researcher having the perspective of a public school administrator, this study calls on the Illinois High School Association to consider taking a stronger stand on the issue of home schooler access to extracurricular activities. Realizing the initial threat of litigation that would accompany such a policy stance, the case can and will be made

that giving each local district the right to determine access does not completely protect the IHSA from legal problems nor does it make sense when considering the lack of continuity across the state. One of the concerns raised by both Diegmueller (1995) and Natale (1996) in having a policy which allows home schoolers access is the potential threat of a public school student who is academically ineligible or unhappy in their coursework to drop out of school, claiming home school status to regain their academic eligibility. Some would argue that this should never happen given the present IHSA rule requiring the local high school to monitor the home school student's weekly academic performance and certify that the student is passing a minimum of 20 credit hours. However, given the misguided ethics and priorities of many children, parents, and public school administrators today, it would appear quite possible that given the IHSA's present policy position it might someday have to rule on such a case. If that were to happen, how difficult might it be to prove or disprove the motives of those involved and what might be the likelihood of litigation if the home schooler were ruled ineligible?

A second area of concern involves the issue of fairness. Both sides raise this issue, but those who argue against access would seem to have made the most compelling case. Anti-access advocates make the point that allowing home schoolers access to extracurricular activities is unfair to students who sit in class all day and respect the public school rules and requirements. No matter what type of eligibility requirements are established by legislative statute or athletic association by-laws, there would seem to be a double standard in how they were applied to a full-time public school student versus a part-time home schooled student.

Another point raised on behalf of the public school's interests and finding support in the courts is that the public school system has historically provided a unified program requiring academic courses, elective courses, and extracurricular activities to be integrated. Other public school interests believed to be furthered by a policy denying

that giving each local district the right to determine access does not completely protect the IHSA from legal problems nor does it make sense when considering the lack of continuity across the state. One of the concerns raised by both Diegmueller (1995) and Natale (1996) in having a policy which allows home schoolers access is the potential threat of a public school student who is academically ineligible or unhappy in their coursework to drop out of school, claiming home school status to regain their academic eligibility. Some would argue that this should never happen given the present IHSA rule requiring the local high school to monitor the home school student's weekly academic performance and certify that the student is passing a minimum of 20 credit hours. However, given the misguided ethics and priorities of many children, parents, and public school administrators today, it would appear quite possible that given the IHSA's present policy position it might someday have to rule on such a case. If that were to happen, how difficult might it be to prove or disprove the motives of those involved and what might be the likelihood of litigation if the home schooler were ruled ineligible?

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Another point raised on behalf of the public school's interests and finding support in the courts is that the public school system has historically provided a unified program requiring academic courses, elective courses, and extracurricular activities to be integrated. Other public school interests believed to be furthered by a policy denying

access include promoting loyalty and school spirit, maintaining academic standards for participation in interscholastic sport and avoiding the uncertainty that is likely to occur when home schoolers do not attend classes on a regular basis, but are allowed to pick and choose among extracurricular activities. Also, with many public schools limiting the number of spots available with many extracurricular activities, the question of fairness arises with the prospect of a full-time public school student being bumped by a part-time home schooler held to a different standard of eligibility.

The Kansas State High School Activities Association (KSHSAA) recently took a strong and successful stand opposing legislation that would have permitted home schooled students to play sports in their local public school. In a recent public statement on the issue of access the KSHSAA's executive director raised the purported unfairness of allowing home schoolers to have it. He explained:

> Athletics is not a right. Students who become eligible to play do so by enrolling and attending the appropriate school. To open athletics beyond the student body raises issues of fairness. How are public educators to know if a home-schooled student is truly receiving a meaningful and comparable education? And allowing a home-schooler to play public sports demeans the academics. It sends a message that public sports is more significant than public education, that you don't have to experience the latter to do the former. (Lafee, 1998, p. 20)

The third area of concern rests with the administrative burden created by the IHSA's present policy of allowing each local school district to determine whether to allow home schooler's access to extracurricular interscholastic activities. Clearly, a policy which allows access creates an administrative burden on both local district administrators as well as IHSA administrative staff to ensure that any home schooler requesting access to a certain extracurricular activity is compliant with both local district and IHSA eligibility standards. There are very few public school administrators, if any, that would welcome the added responsibility, not to mention the fact that schools

presently receive no state aid for the added responsibility of monitoring home schoolers that have been provided access.

A final area of concern rests with the inefficiency created by a policy that lets each district decide the issue of home schooler access. The scope of this study did not try to determine the uniformity of access policy across the state of Illinois. However, based on informal discussions and preliminary findings it has been determined that no uniformity of policy position on the issue of access currently exists. In Illinois three types of policy positions have been taken: there are districts that allow access at some level, there are districts which deny access altogether, and there are those districts which have yet to create policy on the issue. This present state of affairs would seem to be confusing and inefficient, not to mention potentially unfair. Despite the potential threat of litigation, it would seem that the IHSA would want to create a policy that gives greater uniformity on this issue across the state. How fair to home schoolers is it when one local school district allows access to extracurricular activities when a neighboring school district might have a policy denying such access? Might not the IHSA policy be called into question and the organization be named as a co-defendant in a case examining this created inequity?

Recommendations

One of the primary purposes of this study was to determine what other states are presently doing with the issue of home schoolers requesting access to public school extracurricular activities so that an organization like the Illinois High School Association (IHSA) could make an informed future policy decision with regard to this issue. Currently, there are 28 state high school associations known to deny home schoolers access in interscholastic activities. Much like the state of Illinois, there exists no uniformity of policy among the 50 state athletic associations on the issue of home schooler access. My first recommendation involves calling on the National Federation of

State High School Associations (NFHS) to take the position of adopting a policy which denies home schoolers access to extracurricular interscholastic activities. If the majority of state athletic associations would support such a policy stand, it would create greater uniformity of case law and legal precedent in cases that were litigated. In addition, if state association monies were pooled, it could create deeper pockets for any prolonged legal battle on the issue. Given the number of cases that have already been successfully defended in various states and the neutral position taken on this issue by organizations like the Home School Legal Defense Association (HSLDA), it would seem that the fear of numerous access cases being litigated is somewhat unfounded.

My second and final recommendation is based on the likelihood that my first recommendation will not be followed. If the National Federation of State High School Associations (NFHS) proves unwilling to take a strong policy stand on the issue of access, than the Illinois High School Association (IHSA) should take it upon itself to create such a policy. The policy can easily be modeled after one of the 15 states that requires all students to be legally enrolled in the school which they are participating or the eight states that require all eligible participants to be "bona fide" students. The IHSA might follow the lead of their neighboring state Wisconsin as one of the "legally enrolled" states. The Wisconsin Interscholastic Athletic Association's (WIAA) policy reads:

> A student is eligible for interscholastic competition at a member school if he/she is carried on the attendance rolls as a duly enrolled student of a public member school for purposes of state equalization aids as a Grade 9, 10, 11, or 12 student in that member school. (WIAA Handbook, 1998-99, p. 34)

Or the IHSA could adopt a policy similar to the Arkansas Activities Association (AAA) which states:

> A student participating in interscholastic activities must be a bona fide student of the school, a bona fide student is one who has not been

> graduated from a high school and who is enrolled in and attending regularly at least four academic courses identified in the Arkansas Department of Education Standards of Accreditation. (AAA Student Eligibility Sheet, 1997-1998, p. 1)

Either of these policies could serve as the blueprint for the Illinois High School Association (IHSA) taking a stronger policy position on the issue of access. There is little doubt that the present policy is perceived to be the safest legally for the IHSA. However, it does little to clarify the issue for any of its member schools and leaves the door wide open for previously cited ancillary concerns.

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APPENDIX A

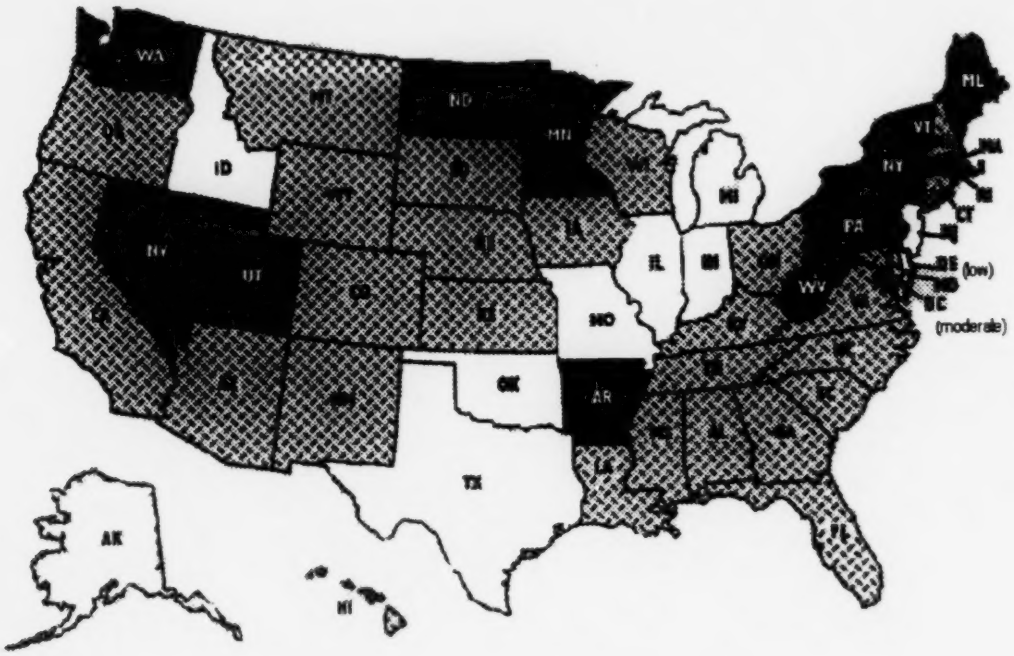
DEGREE OF HOME SCHOOL REGULATION ACROSS THE UNITED STATES

Regulation of Home Education Across the United States

Low Regulation:
No state requirement for parents to initiate any contact with the state.

Moderate Regulation:
State requires parents to send notification, test scores and/or professional evaluation of student progress.

High Regulation:
State requires parents to send notification or achievement test scores and/or professional evaluation, plus other requirements (e.g. curriculum approval by the state, teacher qualifications of parents, or home visits by state officials).



Note. From "Home Education Across the United States," by B. D. Ray and Home School Legal Defense Association, 1997, p. 7. Copyright 1977 by Brian D. Ray and Home School Legal Defense Association. Adapted with permission.

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APPENDIX B

STATE STATUTES THAT ALLOW HOME SCHOOL EXTRACURRICULAR ACCESS

STATE STATUTES

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ARIZONA REVISED STATUTES

§ 15-802.01. Children instructed at home; participation in interscholastic activities

A. Notwithstanding any other law, a child who resides within the attendance area of a public school and who is instructed at home may be allowed to participate in interscholastic activities on behalf of the public school. If a school declines to allow children instructed at home to participate in an interscholastic activity, the children instructed at home who reside within the attendance area of the school may be allowed to participate in the interscholastic activity on behalf of any other school. The state board of education shall adopt rules prescribing procedures for the participation of children instructed at home in interscholastic activities, including, if necessary, requiring the child to take a nationally standardized norm-referenced achievement test or academic evaluation for verification of academic performance. The rules adopted by the state board of education shall provide that child who is instructed at home and who was previously enrolled in a school shall be ineligible to participate in interscholastic activities on behalf of a difference school for the remainder of the school year during which the child was enrolled in a school.

B. A school district shall not contract with any private entity that supervises interscholastic activities if the private entity prohibits the participation of children instructed at home in interscholastic activities.

Added by Laws 1995, Ch. 268, § 44. Amended by Laws 1997, Ch. 35, § 1.

COLORADO REVISED STATUTES ANNOTATED

22-33-104.5. Home-based education - legislative declaration - definitions - guidelines.

(6) (a) If a child is participating in a non-public home-based educational program but also attending his local school district of residence for a portion of the school day, the local school district of residence shall be entitled to count such child in accordance with the provisions of section 22-54-103 (10) for purposes of determining pupil enrollment under the "Public School Finance Act of 1994," ARTICLE 54 OF THIS TITLE.
(6) (b) For purposes of this subsection (6), a child who is participating in a non-public home-based educational program may participate on an equal basis in any extracurricular or interscholastic activity offered by a public school in the child's public school district of residence or offered by a private school, at the private school's discretion, provided the child:

(I) Is in compliance with all laws governing non-public home-based education;

(II) (A)Meets all eligibility requirements for participation in the extracurricular or interscholastic activities, except for class attendance requirements of the school district or any recognized association of schools organizing and controlling the extracurricular or interscholastic activities, if the child elects to participate in an extracurricular or interscholastic activity through a public school;

(II) (B)Meets all eligibility requirements established by a private school in the extracurricular or interscholastic activity if the child elects to participate in an extracurricular or interscholastic activity through a private school;

(III) Has not been ruled academically ineligible to participate in extracurricular or interscholastic activities while a public school student within the last two years; and

(IV) Fulfills the same responsibilities and standards of behavior and performance, including related classroom or practice requirements, as other students participating in the extracurricular or interscholastic activity of the team, squad, or group, and meets the same standards for participation with the team, squad, or group.

(V) (Deleted by amendment, L. 94, p. 2837, § 2, effective June 7, 1994.)

(c) No child participating in an extracurricular or interscholastic activity pursuant to paragraph (b) of this subsection (6) shall be considered attending the public school district where the child participates in such activity for purposes of determining pupil enrollment under paragraph (a) of this subsection (6).

(d) As used in this subsection (6), "extracurricular or interscholastic activities" shall have the same meaning as set forth in section 22-32-116.5 (5).

(e) If any fee is collected pursuant to this subsection (6) for participation in an activity, the fee shall be used to fund the particular activity for which it is charged and shall not be expected for any other purpose.

Source: L. 88: pp. 766, 812, § § 1, 12. **L. 93:** (6) amended, p. 457, § 2, effective April 19. **L. 94:** (2) (c) added and (3) (e), (3) (f), and (5) amended, p. 618, § § 1, 2, effective April 14; (3) (b), IP (6) (b) (II), and (6) (b) (V) amended, p. 677, § 2, effective April 19; (6) (a) amended, p. 813, § 29, effective April 27; (6)(e) added, p. 1283 § 8, effective May 22; (6)(b) and (6)(b)(V) amended and (6)(f) added, p. 2837, § 2, effective June 7.

Editor's note: 22-33-104.5 (6)(d) as enacted by section 7 of chapter 154. Session Laws of Colorado 1994, was subsequently repealed by section 6 of chapter 224. resulting in the relettering of the remaining provisions of subsection (6), as enacted by chapters 224 and 351.

Cross references: For further provisions concerning student participation in interscholastic activities in a school in which they do not attend, see § 22-32-116.5.

Am. Jur.2d. See 68 Am. Jur.2d, Schools, §§ 234-239, 357.

C.J.S. See 79 C.J.S., Schools and School Districts, § 468.

COLORADO REVISED STATUES ANNOTATED (AMENDED 1996)

22-33-104.5 Home-based education - legislative declaration - definitions - guidelines. (6)(b) For purposes of this subsection (6), a child who is participating in a non-public home-based educational program may participate on an equal basis in any extracurricular or interscholastic activity offered by a public school or offered by a private school, at the private school's discretion, as provided in section 22-32-116.5.

(d) As used in this subsection (6), "extracurricular or interscholastic activities" shall have the same meaning as "activity" as set forth in section 22-32-116.5 (10).

Source: L. 96: (6)(b) and (6)(d) amended, p. 1022, § 2, effective May 23.

FLORIDA STATUTES

232.425 Student standards for participation in interscholastic extracurricular student activities; regulation.

(1) This section may be cited as the "Craig Dickinson Act."

(2) The Legislature recognizes the importance of interscholastic extracurricular student activities as a complement to the academic curriculum. Participation in a comprehensive extracurricular and academic program contributes to student development of the social and intellectual skills necessary to become a well-rounded adult. It is the intent of the Legislature to provide the mechanism for all students in Florida to participate in interscholastic extracurricular activities. As used in this section, the term "extracurricular" means any school-authorized or education-related activity occurring during or outside the regular instructional school day.

(3)(a) To be eligible to participate in interscholastic extracurricular student activities, a student entering the 9th grade during the 1997-1998 school year and thereafter must maintain a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 232.246(1). In order to be eligible under this section, students who entered the 9th grade prior to the 1997-1998 school year must maintain a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required by s. 232.246(1) that are taken after July 1, 1997, or have an overall cumulative grade point average of 2.0 or above. Eligibility for the first semester of the 1997-1998 school year for those students who entered the 9th grade prior to the 1997-1998 school year shall be based on the school board's policy in effect for the 1996-1997 school year. Additionally, a student must maintain satisfactory conduct and, if a student is convicted of, or is found to have committed, a felony or a delinquent act which would have been a felony if committed by an adult, regardless of whether adjudication is withheld, the student's participation in interscholastic extracurricular activities is contingent upon established and published school board policy.

(b) Any student who is exempt from attending a full school day under s. 228.041(13) must maintain the grade point average required by this section and pass each class for which he or she is enrolled.

(c) An individual home education student is eligible to participate at a public school, and may develop an agreement to participate at a nonpublic school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

1. The home education student must meet the requirements of the home education program pursuant to s.232.02(4).

2. During the period of participation at a school, the home education student must demonstrate educational progress as required in paragraph (b) in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the principal which may include: review of the student's work by a certified teacher chosen by the parent; grades earned through correspondence; grades earned in courses taken at a community college, university, or trade school; standardized test scores above the 35th percentile; or any other method designated in s.232.02(4).

3. The home education student must meet the same residency requirements as other students in the school at which he or she participates.

4. The home education student must meet the same standards of acceptance, behavior, and performance as required of other students in extracurricular activities.

5. The student must register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate. A home education student must be able to participate in curricular activities if that is a requirement for an extracurricular activity.

6. A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school, pursuant to subparagraph 2.

7. Any public school or nonpublic school student who has been unable to maintain academic eligibility for participation in interscholastic extracurricular activities is ineligible to participate in such activities as a home education student until the student has successfully completed one grading period in home education pursuant to subparagraph 2. to become eligible to participate as a home education student.

(4) The student standards for participation in interscholastic extracurricular activities must be applied beginning with the student's first semester of the 9th grade. Each student must meet such other requirements for participation as may be established by the school district; however, a school district may not establish requirements for participation in interscholastic extracurricular activities which make participation in such activities less accessible to home processes or requirements that are placed on home education student participants may not go beyond those that apply under s.232.02 to home education students generally.

(5) Any organization or entity that regulates or governs interscholastic extracurricular activities of public schools:

(a) Shall permit home education associations to join as member schools.

(b) Shall not discriminate against any eligible student based on an educational choice or public, nonpublic, or home education.

(6) Public schools are prohibited from membership in any organization or entity which regulates or governs interscholastic extracurricular activities and discriminates against eligible students in public, nonpublic, or home education.

(7) Any insurance provided by school districts for participants in extracurricular activities shall cover the participating home education student. If there is an additional premium for such coverage, the participating home education student shall pay said premium.

Amended by Laws 1995, c.95-147, § 1277, eff. July 10, 1995; Laws 1996, c. 96-174, § 1, eff. July 1, 1996; Laws 1997, c. 97-2, § 10, eff. July 1, 1997; Laws 1997, c. 97-254, § 1, eff. July 1, 1997.

United States Supreme Court

Schools, drug testing, student athletes, see Vernonia School Dist. 47J v. Acton, 1995, 115 S.Ct. 2386, 515 U.S. 646, 132 L.Ed.2d 564, on remand 66 F.3d 217.

Notes of Decisions

Private school students 1

1. Private school students

Section 232.425, Florida Statutes, as amended by Chapter 96-174, Laws of Florida, authorizes home education students to participate in interscholastic extracurricular activities conducted by the public school system but does not authorize the participation of private school students in such public school activities. Op.Atty.Gen. 96-87, November 4, 1996.

IDAHO CODE

33.203. Dual enrollment. -- (1) The parent or guardian of a child of school age who is enrolled in a nonpublic school shall be allowed to enroll the student in a public school for dual enrollment purposes. The board of trustees of the school district shall adopt procedures governing enrollment pursuant to this section. If enrollment in a

specific program reaches the maximum for the program, priority for enrollment shall be given to a student who is enrolled full time in the public school.

(2) Any student participating in dual enrollment may enter into any program in the public school available to other students subject to compliance with the same rules and requirements that apply to any student's participation in the activity.

(3) Any school district shall be allowed to include dual-enrolled nonpublic school students for the purposes of state funding only to the extent of the student's participation in the public school programs.

(4) Oversight of academic standards relating to participation in nonacademic public school activities shall be the responsibility of the primary educational provider for that student. In order for the nonpublic school student to participate in nonacademic public school activities the nonpublic school student shall achieve a minimum score on the achievement test required annually by the state board of education, and that score shall be used to determine eligibility for the following year. The student shall be eligible if the minimum composite test score places the student within the average or higher than average range as established by the test service utilized.

(5) A public school student who has been unable to maintain academic eligibility is ineligible to participate in nonacademic public school activities as a nonpublic school student for the duration of the school year in which the student becomes academically ineligible and for the following academic year.

(6) A nonpublic school student participating in nonacademic public school activities must reside within the attendance boundaries of the school for which the student participates.

(7) Dual enrollment shall include the option of joint enrollment in a regular public school and an alternative public school program. The state board of education shall establish rules that provide funding to school districts for each student who participates in both a regular public school program and an alternative public school program.

(8) Dual enrollment shall include the option of enrollment in a post-secondary institution. Any credits earned from an accredited post-secondary institution shall be credited toward state board of education high school graduation requirements.

(9) A nonpublic student is any student who receives educational instruction outside a public school classroom and such instruction can include, but is not limited to, a private school or a home school. {I.C., § 33-203, as added by 1995, ch. 224, § 1, p. 775.}

Compiler's notes. Former § 33-203 which comprised S.L. 1963, ch. 13, § 26, p. 27, was repealed by S.L. 1979, ch. 71, § 1.

IOWA ADMINISTRATIVE CODE

281--31.5(299A) Dual Enrollment.

31.5(1) The parent, guardian, or legal custodian of a child of compulsory attendance age who is receiving competent private instruction may enroll the child in the public school district of residence of the child under dual enrollment shall notify the district of residence of the child not later than September 15 of the school year for which dual enrollment is sought.

31.5(2) A child under dual enrollment may participate in academic or instructional programs of the district on the same basis as any regularly enrolled student.

31.5(3) A child under dual enrollment may participate in any extracurricular activity offered by the district on the same basis as regularly enrolled students. If a child under dual enrollment was under competent private instruction the previous semester, the provisions of 281--subrule 36.15(2), paragraph "c," shall not apply. However, other rules and policies of the state and district related to eligibility for extracurricular activities shall apply to the child. If a student seeking dual enrollment is enrolled in a nonaccredited nonpublic school that is an "associate member" of the Iowa Girls High School Athletic union or Iowa High School Athletic Association, the student is eligible and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing program as outlined in 281--36.20(280).

31.5(4) The district shall notify the child's parent, guardian, or legal custodian of the academic and extracurricular activities available to the child.

31.5(5) A child under dual enrollment is eligible to receive the services and assistance of the appropriate area education agency on the same basis as are children otherwise enrolled in the district. The district shall act as liaison between the parent, guardian, or legal custodian of a child who is receiving competent private instruction and the area education agency.

IOWA ANNOTATED CODE

256.46. Rules for participation in extracurricular activities by certain children

The state board shall adopt rules that permit a child who does not meet the residence requirements for participation in extracurricular interscholastic contests or competitions sponsored or administered by an organization as defined in section 280.13 to participate in the contests or competitions immediately if the child is duly enrolled in a school, is

otherwise eligible to participate, and meets one of the following circumstances or a similar circumstance: the child has been adopted; the child is placed under foster or shelter care; the child is living with one of the child's parents as a result of divorce, separation, death, or other change in the child's parents' marital relationship; the child is a foreign exchange student; the child has been placed in a juvenile correctional facility; the child is a ward of the court or the state; the child is a participant in a substance abuse or mental health program; or the child is enrolled in an accredited nonpublic high school because the child's district of residence has entered into a whole grade sharing agreement for the pupil's grade with another district.

Added by Acts 1990 (73 G.A.) ch. 1049, § 1. Amended by Acts 1992 (74 G.A.) ch. 1135, § 1; Acts 1993 (75 G.A.) ch. 101, § 201.

Historical and Statutory Notes

The 1992 amendment added "; or the child is enrolled in an accredited nonpublic high school because the child's district of residence has entered into a whole grade sharing agreement for the pupil's grade with another district."

The 1993 amendment deleted "or has been" preceding "a foreign exchange student."

Title of Act:

An Act relating to participation in extracurricular interscholastic contests and competitions by certain children. Acts 1990 (73 G.A.) ch. 1049.

299A.8 Dual Enrollment.

If a parent, guardian, or legal custodian of a child who is receiving competent private instruction under this chapter submits a request, the child shall also be registered in a public school for dual enrollment purposes. If the child is enrolled in a public school district for dual enrollment purposes, the child shall be permitted to participate in any academic activities in the district and shall also be permitted to participate on the same basis as public school children in any extracurricular activities available to children in the child's grade or group, and the parent, guardian, or legal custodian shall not be required to pay the costs of any annual evaluation under this chapter. If the child is enrolled for dual enrollment purposes, the child shall be included in the public school's basic enrollment under section 257.6.

20-A § 5021 Standards for participation in public schools by students enrolled in equivalent instruction programs

A school administrative unit shall conform to the following standards in making public school resources and services available to a student enrolled in an equivalent instruction program approved by the commissioner pursuant to section 5001--A, subsection 3, paragraph A, subparagraph (3) for a student otherwise eligible to attend school in that school administrative unit.

1. Participation in regular classes. A student receiving home instruction may enroll in specific day school classes at the appropriate public school if each of the following conditions is met.

A. The student or the student's parent or guardian, on the student's behalf, applies in writing to and receives written approval from the superintendent or the superintendent's designee. Approval may not be unreasonably withheld.

B. The student can demonstrate prior satisfactory academic achievement consistent with school unit policy and procedures applicable to all students.

C. The student shall comply with behavioral, disciplinary, attendance and other classroom rules applicable to all students. If a student fails to comply, the school may withhold credit or terminate participation.

D. Transportation must be provided by the parent or guardian or student. The student may use the same transportation as all other students in the school unit, as long as additional expenses are not incurred.

E. The student shall complete all assignments and tests as required of all students in the class.

F. A home-schooled student may audit a course in accordance with established local policy at the appropriate public school under the following conditions.

(1) The student or the student's parent or guardian, on behalf of the student, applies in writing to and receives written approval from the superintendent or the superintendent's designee to audit a specific course or courses. Participation may not be unreasonably withheld.
(2) The student agrees to meet established behavioral, disciplinary, attendance and other classroom rules applicable to all students. If a student fails to comply, the school may terminate participation.

2. **Academic credit.** A student receiving home-school instruction must receive academic credit subject to the following requirements.

A. Academic credit for individual courses must be awarded if the student meets required academic standards applicable to all students enrolled in the same course.

B. Academic credit must be awarded for successful completion of alternative instruction opportunities sponsored by the school and available to all students.

3. **Special education services.** A student receiving home-school instructions eligible for special education services, as provided under federal regulations, in accordance with section 5001--A and relevant department procedures and standards.

4. **Participation in cocurricular activities.** A student receiving home-school instructions eligible to participate in cocurricular activities sponsored by the local school unit provided the following requirements are met.

A. The student or the student's parent or guardian, on behalf of the student, applies in writing to and receives written approval from the principal of the school or the principal's designee. Participation may not be unreasonably withheld.

B. The student agrees to meet established behavioral, disciplinary, attendance and other rules applicable to all students.

5. **Participation in extracurricular activities.** Students receiving home-school instruction are eligible to try out for extracurricular activities sponsored by the local school unit, provided the student applies in writing, if the following requirements are satisfied.

A. The student agrees to abide by equivalent rules of participation as are applicable to regularly enrolled students participating in the activity and provides evidence that the rules of participation are being met.

B. The student complies with the same physical examination, immunization, insurance, age and semester eligibility requirements as regularly enrolled students participating in the activity. All required documentation must be made available upon request by the school unit.

C. The student meets equivalent academic standards as those established for regularly enrolled students participating in the activity and provides evidence that the academic standards are being met.

D. The student abides by the same transportation policy as regularly enrolled students participating in the activity.

6. Use of school facilities and equipment. A student receiving home-school instruction may use public school facilities and equipment on the same basis as regularly enrolled students if the following conditions are met:

A. Use does not disrupt regular school activities;

B. Use is approved by the school principal in accordance with established school policy;

C. Use does not create additional expense to the school unit;

D. Use is directly related to the student's academic program; and

E. Use of potentially hazardous areas, such as shops, laboratories and the gymnasium, is supervised by a qualified employee of the school administrative unit.

7. Use of school textbooks and library books. Subject to availability, a student receiving home instruction may use school textbooks if the number of particular copies are sufficient and library books owned by the school unit subject to the following conditions:

A. Use does not disrupt regular student, staff or special program functions;

B. The student's sign-out period for a library book is the same as that applicable to regularly enrolled students;

C. The student may sign out a textbook for a period not to exceed one year; and

D. The parent or guardian and student agree to reimburse the school unit for lost, unreturned or damaged library books and textbooks and for consumable supplies used.

1995, c. 610, § 1.

Historical and Statutory Notes

Purpose

1995 Act. Laws 1995, c. 610, § 2, provided:

"With respect to the provision for equivalent instruction under the Maine Revised Statutes, Title 20--A, section 5001--A, subsection 3, paragraph A, subparagraph (3), the Legislature recognizes that the term 'equivalent' is intended to mean meeting state standards, for alternate or other instruction and is not intended to mean the same as the education delivered in the public school system. It is the intention of the Legislature that,

to meet the State's obligation to educate its children, the State and local school administrative units shall cooperate in the home instruction of any child who resides in that school administrative unit to the degree that the level of cooperation does not interfere with the responsibilities to students enrolled in regular programs."

NORTH DAKOTA CENTURY CODE

15--34.1-06. Home-based instruction. Home-based instruction is an educational program for students based in the child's home and supervised by the child's parent or parents. A parent who provides home-based instruction may only invoke the home-based instruction exception to compulsory attendance. A parent is qualified to supervise a program of home-based instruction if the parent is certified to teach in North Dakota; has a high school education or has received a general educational development certificate and is monitored by a certified teacher; or has met or exceeded the cut-off score of the national teacher exam given in North Dakota, or in any other state if North Dakota does not offer such a test. Home-based instruction must include those subjects required to be taught in accordance with sections 15-38-07, 15-41-06, and 15-41-24 and must be provided for at least four hours per day for a minimum of one hundred seventy-five days per year. Every parent supervising home-based instruction shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. A parent shall furnish these records to any school to which the child may transfer upon request of the superintendent or other administrator of that public school district. A parent intending to supervise home-based instruction for the parent's child shall file an annual statement with the superintendent of the public school district in which the child resides. If the school district does not employ a local school superintendent, the statement must be filed with the county superintendent of schools for the county of the child's residence. The statement must be filed at least thirty days prior to the beginning of the school semester for which the parent requests an exemption except when residency of the child is not established by that date. If residency has not been established, the statement must be filed within thirty days of the establishment of residency within the district. The statement must include:

1. The names and address of the parent who will supervise and the child who will receive home-based instruction;
2. The date of birth and grade level of each child;
3. The intention of the parent to supervise home-based instruction;
4. The qualifications of the parent who will supervise the home-based instruction;
5. A list of courses or extracurricular activities in which the child intends to participate in the public school district;
6. Proof of an immunization record as it relates to section 23-07-16;

7. Proof of identity as it relates to section 54-23.2-04.2; and
8. An oath or affirmation that the parent will comply with all provisions of this chapter.

Source: S.L. 1989, ch. 198, § 4; 1993, ch. 188, § 2.

Note.

Section 4 of chapter 198, S.L. 1989, effective July 6, 1989, as amended by section 2 of chapter 188, S.L. 1993, effective April 12, 1993, temporarily enacted this section, effective through June 30, 1993. Section 6 of chapter 188, S.L. 1993, effective April 12, 1993, repealed the expiration provision in section 9 of chapter 198, S.L. 1989. Therefore, this section has been set out above, as enacted by section 4 of chapter 198, 1989, and as amended by section 2 of chapter 188, S.L. 1993.

OREGON REVISED STATUTES

339.460 Home school students authorized to participate in interscholastic activities; conditions

(1) Home school students shall not be denied by a school district the opportunity to participate in all interscholastic activities if the student fulfills the following conditions:

(a) The student must be in compliance with all rules governing home schooling and shall provide the school administration with acceptable documentation of compliance.
(b) The student must meet all school district eligibility requirements with the exception of:
(A) The school district's school or class attendance requirements; and
(B) The class requirements of the voluntary association administering interscholastic activities.
(c) The student must achieve a minimum score on the achievement test required annually of all home schooling students which shall be taken at the end of each year, and which shall be used to determine eligibility for the following year. The minimum, composite test score, to be determined by the State Board of Education, shall not be higher than the 50th percentile as based on national norms.
(d) Any public school student who chooses to be home schooled must also meet the minimum test standards as described in paragraph (c) of this subsection. The student may participate while awaiting test results.
(e) Any public school student who has been unable to maintain academic eligibility shall be ineligible to participate in interscholastic activities as a home school student for the duration of the school year in which the student becomes

academically ineligible and for the following year. The student must take the required tests at the end of the second year and meet the standards described in paragraph (e) of this subsection to become eligible for the third year.
(f) The home school student shall be required to fulfill the same responsibilities and standards of behavior and performance, including related class or practice requirements, of other students participating in the interscholastic activity of the team or squad and shall be required to meet the same standards for acceptance on the team or squad. The home school student must also comply with all public school requirements during the time of participation.
(g) A home school student participating in interscholastic activities must reside within the attendance boundaries of the school for which the student participates.

(2) As used in this section:

(a) "Board" means the State Board of Education.
(b) "Home school students" are those children taught by private teachers or parents as described in ORS 339.035.
(c) "Interscholastic activities" includes but is not limited to athletics, music, speech, and other related activities.

[1991 c.914 § § 1, 2]

WASHINGTON COMMON SCHOOLS PROVISIONS

28A.150.350. Part time students--Defined--Enrollment authorized--Reimbursement for costs--Funding authority recognition--Rules, regulations

(1) For purposes of this section, the following definitions shall apply:

(a) "Private school student" shall mean any student enrolled full time in a private school;
(b) "School" shall mean any primary, secondary or vocational school;
(c) "School funding authority" shall mean any nonfederal governmental authority which provides moneys to common schools;
(d) "Part time student" shall mean and include: Any student enrolled in a course of instruction in a private school and taking courses at and/or receiving ancillary services offered by any public school not available in such private school; or any student who is not enrolled in a private school and is receiving home-based instruction under RCW 28A.225.010 which instruction includes taking courses in any public school, which work training program is approved by the school board of the district in which such school is located.

(2) The board of directors of any school district is authorized and, in the same manner as for other public school students, shall permit the enrollment of and provide ancillary services for part time students: *Provided,* That this section shall only apply to part time students who would be otherwise eligible for full time enrollment in the school district.

(3) The superintendent of public instruction shall recognize the costs to each school district occasioned by enrollment of and/or ancillary services provided for part time students authorized by subsection (2) of this section and shall include such costs in the distribution of funds to school districts pursuant to RCW 28A.150.260. Each school district shall be reimbursed for the costs or a portion thereof, occasioned by attendance of and/or ancillary services provided for part time students on a part time basis, by the superintendent of public instruction, according to law.

(4) Each school funding authority shall recognize the costs occasioned to each school district by enrollment of and ancillary services provided for part time students authorized by subsection (2) of this section, and shall include said costs in funding the activities of said school districts.

(5) The superintendent of public instruction is authorized to adopt rules and regulations to carry out the purposes of RCW 28A.150.260 and 28A.150.350.

Formerly § 28A.41.145, enacted by Laws 1969, Ex.Sess., ch. 217, § 4, eff. July 1, 1970. Amended by Laws 1972, Ex.Sess., ch. 14, § 1; Laws 1977, Ex.Sess., ch. 359, § 8, eff. Sept. 1, 1978; Laws 1985, ch. 441, § 5. Recodified as § 28A.150.350 and amended by Laws 1990, ch. 33, § § 4, 112.

Historical and Statutory Notes

Severability--Laws 1985, ch. 441: See Historical and Statutory Notes following § 28A.225.010.

Effective date--Severability--Laws 1977, Ex.Sess., ch. 359: See Historical and Statutory Notes following § 28A.150.200.

Severability--Laws 1972, Ex.Sess., ch. 14: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is held invalid." [Laws 1972, Ex.Sess., ch. 14, § 2.]

Source:

Former § 28.41.145.

Cross References

Basic Education Act, see § 28A.150.200.

Administrative Code References

Part-time public school attendance, see WAC 392--134--002 et seq.

Library References

Schools 1, 10.
WESTLAW Topic No. 345

C.J.S. Schools and School Districts
§ § 3, 12 et seq.

APPENDIX C

CHART OF 50 STATES THAT ALLOW OR DENY HOME SCHOOL EXTRACURRICULAR ACCESS

State	Allow or Deny Home School Extracurricular Access
Alabama	Deny Access - "Legally Enrolled" State
Alaska	Allow Access - By-law Allowance
Arizona	Allow Access - Arizona Revised Statutes § 15-802.01
Arkansas	Deny Access - "Bona fide Student" State
California	Allow Access - By-Law Allowance
Colorado	Allow Access - Colorado Revised Statutes Annotated 22-33-104.5
Connecticut	Deny Access - "Implied Prohibition" State
Delaware	Deny Access - "Legally Enrolled" State
Florida	Allow Access - Florida Statutes 232.425
Georgia	Allow Access - By-Law Allowance
Hawaii	Deny Access - "Direct Denial" State
Idaho	Allow Access - Idaho Code 33.203
Indiana	Deny Access - "Legally Enrolled" State
Iowa	Allow Access - Iowa Administrative Code 281-31.5(299A) & Iowa Annotated Code 256.46
Kansas	Deny Access - "Bona fide Student" State
Kentucky	Deny Access - "Legally Enrolled" State
Louisiana	Deny Access - "Bona fide Student" State
Maine	Allow Access - "Maine Revised Statues Annotated 20-A § 5021
Maryland	Deny Access - "Legally Enrolled" State
Massachusetts	Allow Access - By-Law Allowance
Michigan	Deny Access - "Legally Enrolled" State
Minnesota	Allow Access - By-Law Allowance
Mississippi	Deny Access - "Bona fide Student" State
Missouri	Allow Access - By-Law
Montana	Deny Access - "Legally Enrolled" State
Nebraska	Deny Access - "Bona fide Student" State
Nevada	Deny Access - "Implied Prohibition" State
New Hampshire	Allow Access - By-Law Allowance
New Jersey	Deny Access - "Legally Enrolled" State
New York	Deny Access - "Bona fide Student" State

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New Mexico	*Deny Access - "Bona fide Student" State*
North Carolina	*Deny Access - "Legally Enrolled" State*
North Dakota	*Allow Access - North Dakota Century Code 15–34.1-06*
Ohio	*Deny Access - "Implied Prohibition" State*
Oklahoma	*Deny Access - "Implied Prohibition" State*
Oregon	*Allow Access - Oregon Revised Statutes 339.460*
Pennsylvania	*Allow Access - By-Law Allowance*
Rhode Island	*Allow Access - By-Law Allowance*
South Carolina	*Deny Access - "Legally Enrolled" State*
South Dakota	*Deny Access - "Legally Enrolled" State*
Tennessee	*Deny Access - "Legally Enrolled" State*
Texas	*Deny Access - "Legally Enrolled" State*
Utah	*Allow Access - By-Law Allowance*
Vermont	*Allow Access - By-Law Allowance*
Virginia	*Deny Access - "Bona fide Student" State*
Washington	*Allow Access - Washington Common Schools Provisions 28A.150.350*
West Virginia	*Deny Access - "Legally Enrolled" State*
Wisconsin	*Deny Access - "Legally Enrolled" State*
Wyoming	*Allow Access - By-Law Allowance*
SOURCE(S)	*1995 Current Issues Survey conducted by the Kentucky High School Athletic Association; Individual State Student Eligibility Information obtained through National Federation of State High School Associations (NFHS) Web Site: http://www.nfhs.org. Also obtained 1997-1999 student eligibility handbook information via phone conversations and faxed copies of 35 individual state athletic associations.*

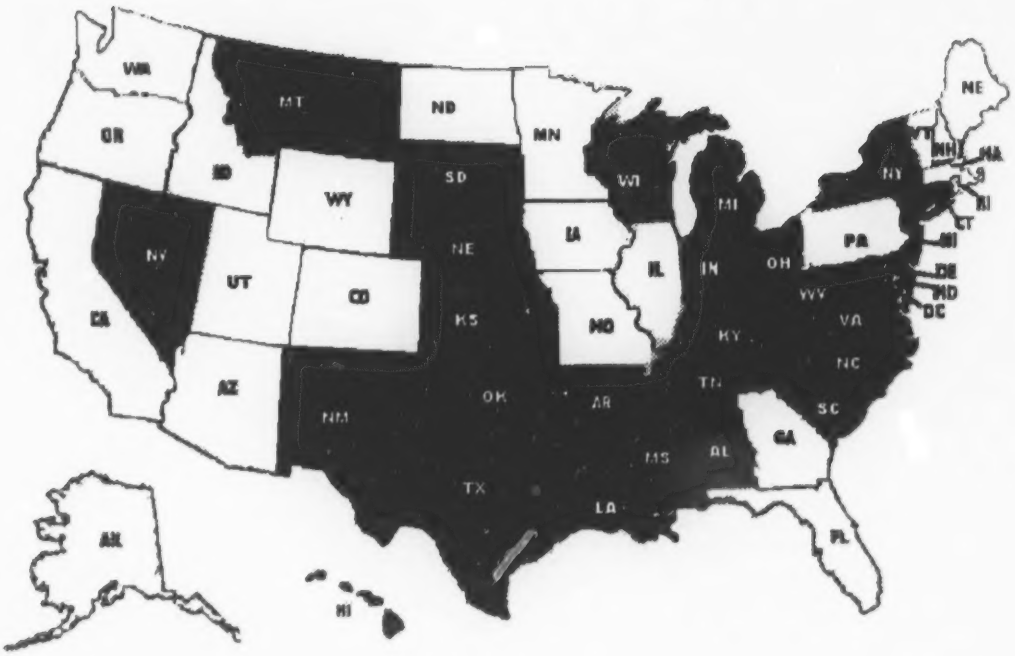
APPENDIX D

MAP OF 50 STATES THAT ALLOW OR DENY HOME SCHOOL EXTRACURRICULAR ACCESS

Home School Extracurricular Access Across the United States

Allow Access:
Either state statute or athletic association by-law allows home schooled students to access public school extra-curricular activities.

Deny Access:
State athletic association by-law denies public school extra-curricular access to home schooled students (e.g. Legally Enrolled Student, Bona fide Student).



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